

8
No. 1589

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

OSCAR ASHBY,

Appellant,

vs.

THE CITY OF JUNEAU, a Municipal Corporation,
Organized and Existing Under and by Virtue of the
Laws of the District of Alaska,

Appellee.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

FILED
JAN 29 1909

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys of Record.

OSCAR ASHBY,

Defendant and Appellant,
Messrs. MALONY & COBB,
Juneau, Alaska.

vs.

THE CITY OF JUNEAU, a Municipal Corporation
Organized and Existing under and by Virtue
of the Laws of the District of Alaska,
Plaintiff and Appellee.

J. A. HELLENTHAL, Esq.,
Juneau, Alaska.

*In the District Court for the District of Alaska, Di-
vision No. 1, at Juneau.*

No. 542-A.

THE CITY OF JUNEAU, a Municipal Corporation
Organized and Existing under and by Virtue
of the Laws of the District of Alaska,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Complaint.

The plaintiff complains of the defendant and al-
leges:

I.

That the plaintiff is a municipal corporation or-

ganized and existing under and by virtue of the laws of the District of Alaska.

II.

That on the 4th day of May, 1906, the City Council of the City of Juneau did, by Ordinance, duly and regularly open and establish a certain street in said City of Juneau, known as Front Street between Seward Street and Franklin Street in said City, which said Ordinance as passed and adopted by the said City of Juneau on the said 4th day of May, 1906, is in words and figures, as follows, to wit:

ORDINANCE NO. 69.

An Ordinance providing for the establishment, opening and improving of Front Street in the City of Juneau, and providing for the permanent establishing of the street lines and boundaries of said Front Street.

The City of Juneau Doth Ordain as Follows:

Section I. The Front Street in the City of Juneau is hereby opened as a public street between the point of intersection of said Front Street with Seward Street in said Town, and the point of intersection of said Front Street with Franklin in said Town, and the boundaries and street lines of said Street are hereby established as follows:

Beginning at a Point marked I a stone firmly set in ground with copper tack at exact point of the intersection of Main and Front Streets from which point the Southwest Corner of Block 2, an iron peg said to be one of the original corners of the town of Juneau, bears N. 4° 41' W. 26.32 feet distant; thence

running No. $57^{\circ} 52'$ E. 234 feet to Point II, a stone firmly set in the ground with copper tack at exact point of the intersection of Front and Seward Streets from which point the NW. corner of Block bounding Front Street on the South bears S. $60^{\circ} 56'$ E. 57.19 feet distant from said block corner, thence said line shall run S. $81^{\circ} 35'$ E. 285.8 feet; thence S. $42^{\circ} 56'$ E. Thence beginning at Point II, the Southwest corner of Block "G" bears N. $4^{\circ} 41'$ W. 26.32 feet from which point the North side of Front Street extends S. $83^{\circ} 4'$ E. 205.3 feet; thence N. $87^{\circ} 35'$ E. 88.7 feet to Southeast Corner of Block "G"; thence beginning at Point II, running N. $57^{\circ} 52'$ E. 5.88 feet to a point intersecting with a parallel line laid off at a distance of 24 feet from said South side of the street; thence S. $81^{\circ} 35'$ E. 343.25 feet to Point designated as point of intersection.

Section II. And Whereas, one Oscar Ashby and the firm of Winter & Pond claim certain possessory rights to certain tracts of tide lands abutting upon said Streets and projecting into said street, as the same is above established to the following extent, to wit:

Oscar Ashby holds possession of and claims a possessory right to a tract of tide lands extending into and overlapping Front Street as hereby opened and established, described as follows:

Corner No. 1, of said Lot bears S. $0^{\circ} 12'$ E. 6.7 feet from a point on line N. $81^{\circ} 35'$ W. 103 feet from point designated in above Notes as point of intersection; thence running S. $87^{\circ} 56'$ E. 36.4 feet to Corner No. 2; thence S. $0^{\circ} 12'$ E. 22.3 feet to Cor-

ner No. 3; thence N. $81^{\circ} 35'$ W. 36.8 feet to Corner No. 4; thence N. $0^{\circ} 12'$ W. 18.2 feet to Corner No. 1, the place of beginning, making an area of 736.77 square feet.

Winter & Pond hold possession of and claim a possessory right to a tract of tide lands extending into and overlapping Front Street as hereby opened and established, described as follows:

Corner No. 1 of said Lot bears S. $52^{\circ} 28'$ W. 15.9 feet from a point on line N. $81^{\circ} 35'$ W. 17.7 feet from point designated as point of intersection, in above Notes, thence running S. $52^{\circ} 28'$ W. 13.1 feet to Corner No. 2; thence N. $81^{\circ} 35'$ W. 28.7 feet to Corner No. 3; thence N. $0^{\circ} 12'$ W. 22.3 feet to Corner No. 4; thence S. $87^{\circ} 56'$ E. 13.8 feet to corner No. 5; thence S. $54^{\circ} 21'$ E. 30.9 feet to corner No. 1, the place of beginning, making an area of 687.20 square feet.

And Whereas, it is necessary in order to open said street and make the same sufficiently wide for the purposes of accommodating the traffic carried on on said street by the public, and for the purpose of accommodating the public travel thereon, that said street be opened and established to the width hereby established and declared and be freed from all obstructions therein.

Section III. Now, Therefore, be it further ordained that condemnation proceedings be commenced in the District Court for the District of Alaska, Division No. 1, by the City of Juneau for the purpose of condemning the property of the said Oscar Ash-

by and also the property of the said Winter & Pond, and their possessory or other rights to the tide lands on the shores of Gastineaux Channel to the extent that the same projects into the said Front Street, as hereby established, or in anywise conflict with or overlap the same.

Section IV. All Ordinances, or parts of Ordinances, conflicting herewith are hereby repealed to the extent of such conflict.

Section V. This Ordinance shall be published for three successive issues commencing on the 5th day of May, 1906, in the "Daily Dispatch," a daily newspaper published in the City of Juneau, Alaska, and shall be posted in three conspicuous public places in said City of Juneau, and shall take effect and be in force from and after date of its passage.

H. T. TRIPP,

Mayor and Ex-Officio President of the Common Council of the City of Juneau.

[Seal] Attest: NATHANAEL GREENE,
City Clerk.

III.

That the said Front Street so opened and established is bounded and described as follows:

Beginning at Point marked I a stone set in ground with copper tack at exact point of the intersection of Main and Front Streets from which point the Southwest Corner of Block 2, an iron peg said to be one of the original corners of the town of Juneau, bears N. 4° 41' W. 26.32 feet distant; thence running N. 57° 52' E. 234 feet to Point II a stone firmly set in the ground with copper tack at exact point of

the intersection of Front and Seward Streets from which point the NW. Corner of Block bounding Front Street on the South bears S. $60^{\circ} 56'$ E. 57.19 feet distant from said Block Corner, thence said line shall run S. $81^{\circ} 35'$ E. 285.8 feet; thence S. $42^{\circ} 56'$ E. Thence beginning at Point II, the Southwest corner of Block "G" bears N. $4^{\circ} 41'$ W. 26.32 feet from which point the North side of Front Street extends S. $83^{\circ} 4'$ E. 205.3 feet; thence N. $87^{\circ} 35'$ E. 88.7 feet to Southeast Corner of Block "G"; thence beginning at Point II running N. $57^{\circ} 52'$ E. 5.88 feet to a point of intersection with a parallel line laid off at a distance of 24 feet from said South side of the street thence S. $81^{\circ} 35'$ E. 243.25 feet to the Point designated as point of intersection.

IV.

That the defendant Oscar Ashby is in possession of and claims a possessory right to a certain parcel of land situate on the shore of Gastineaux Channel, a navigable arm of the Pacific Ocean, and below the line of ordinary high tide, which said tract and parcel of land projects into and overlaps the said Front Street as above laid out and established to the following extent:

Corner No. 1 of said Lot bears N. $82^{\circ} 33'$ W. 59.46 feet from Point designated in above Notes as Point of Intersection; thence S. $2^{\circ} 1'$ W. 7.1 feet; thence S. $23^{\circ} 45'$ W. 17.64 feet; thence N. $81^{\circ} 35'$ W. 38.2 feet; thence N. $0^{\circ} 18'$ W. 18.5 feet; thence S. $87^{\circ} 59'$ E. 45.2 feet to Corner No. 1, the place of beginning.

Which said parcel of tide lands above described as projecting into said Front Street includes only a part of the entire tract or parcel of land in the possession of the said defendants and claimed by him by reason of his possession.

V.

That the location of said tract of land with reference to Front Street and the extent to which the same overlaps and projects into said Front Street above established is delineated upon a Map hereto attached and made a part hereof.

VI.

That said Front Street as above established and opened and laid out, by the said City of Juneau, is a public highway and will be open to and used by the public as such highway and street and that in order to open said street and establish the same to a sufficient width to accommodate the travel thereon, it is necessary that the street be opened and established to the width fixed by the ordinance above referred to, and that all obstructions of whatsoever nature therein be removed, and to that end it is necessary that a right of way be condemned over and upon the tide lands occupied by the defendant, as aforesaid, to the extent that the same encroach upon, project into or overlap said Front Street, as the same is established and opened by the foregoing and above referred to Ordinance.

VII.

Said Front Street as so laid out, opened and established is located in the Town of Juneau within the exterior boundaries thereof, and connects Se-

ward Street, a public highway in said Town, with Franklin Street, also a public highway in said town, and is marked on the ground by appropriate stone monuments referred to in the description of said street hereinbefore given and shown upon the map hereto attached and above referred to.

Wherefore, plaintiff prays that the property and possessory rights of the defendant in and to the tract of tide lands herein, referred to be condemned in so far as the same overlap and project into said Front Street in the City of Juneau, as the same is above described, which said tract of lands so sought to be condemned is of the following dimensions:

Corner No. 1 of said Lot bears N. $82^{\circ} 33'$ W. 59.46 feet from Point designated in above Notes as Point of Intersection; thence S. $2^{\circ} 1'$ W. 7.1 feet; thence S. $23^{\circ} 45'$ W. 17.64 feet; thence N. $81^{\circ} 35'$ W. 38.2 feet; thence N. $0^{\circ} 18'$ W. 18.5 feet; thence S. $87^{\circ} 59'$ E. 45.2 feet to Corner No. 1, the place of beginning.

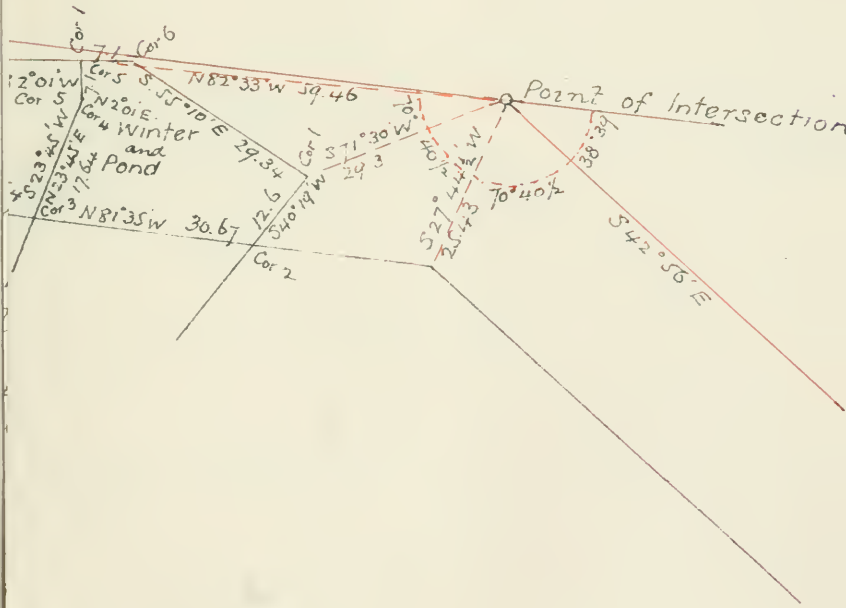
And that the City of Juneau acquire such estate in the said lands by reason of such condemnation as against this defendant, as under the law and the facts it may be entitled to, and for such other relief as the Court may deem just and equitable.

And further, that an order be made appointing three competent persons, residents of this Precinct, as Commissioners to ascertain and denominate the amount to be paid by the plaintiff to the defendant herein, as damages by reason of the appropriation of the hereinbefore described property, or right of way; that the time and place of the first meeting of

such commissioners and their compensations be fixed in said order; that judgment be entered in favor of the plaintiff and against the defendant decreeing that upon the payment of the amount ascertained by the Commissioners and interest and costs allowed by law, if any, the right to take up and appropriate the property described herein, for the purposes herein mentioned; and that thereupon a final order of condemnation be made and entered and the property condemned for the purposes herein stated as by law provided.

J. A. HELLENTHAL,
Attorney for Plaintiff.

SE



PLAT ATTACHED TO COMPLAINT



PLAT
showing
BASELINE
for Streets and Alleys in the Town of
JUNEAU
and
Regulation of the south side of
Front Street
Between
Seward and Franklin Streets
As surveyed by Elias Ruud CE
April 23 - 27, 1906
Scale 25ft. to 1-in
Amended May 14 1906 by
CE Davidson

United States of America,
District of Alaska,—ss.

H. T. Tripp, being first duly sworn according to law, deposes and says that he is the mayor of the said City of Juneau, plaintiff in the above-entitled cause of action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true as he verily believes. That he makes this verification as mayor of the plaintiff corporation.

H. T. TRIPP.

Subscribed and sworn to before me this 19th day of May, 1906.

[Notarial Seal]

L. B. FRANCIS,

Notary Public in and for Alaska.

[Endorsed]: Chap. 22, p. 416, Code. Original. No. 542-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. The City of Juneau, a Municipal Corporation, etc., Plaintiff, vs. Oscar Ashby, Defendant. Complaint. Filed May 19, 1906. C. C. Page, Clerk. By D. C. Abrams, Deputy. J. A. Hellenthal, Attorney for Plaintiff. Office: Juneau, Alaska. Alaska Record-Miner Print.

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 542-A.

THE CITY OF JUNEAU, a Municipal Corporation,
Organized and Existing under and by
Virtue of the Laws of the District of Alaska,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Demurrer.

Now, comes the defendant by his attorneys, and demurs to the complaint and for cause of demurrer alleges:

Said complaint does not state facts sufficient to constitute a cause of action, in this:

1st. The ordinance under which plaintiff is acting in bringing this action is void upon its face, and confers no authority upon plaintiff to maintain this action, for the reason that there is no authority in law for the common council of the plaintiff to enact such ordinance.

2d. Plaintiff has no power to condemn private property for the purposes of widening a street.

3d. Plaintiff has no power to condemn tide lands for the purposes of a street.

4th. It appears from said complaint, that Front Street is sought to be improved by widening the same, and it does not appear that a majority of the abut-

ting property owners has consented to such improvement, as required by law.

5th. It does not appear from said complaint that the use to which said property sought to be taken is a use authorized by law.

6th. It does not appear from said complaint, that there is any public necessity for the widening of Front Street as prayed for in said complaint.

7th. Said complaint contains no statement of plaintiff's right to take said property.

Of all of which defendant prays judgment of the Court.

MALONY & COBB,
Attorneys for Defendant.

Service of the above and foregoing demurrer is admitted to have been duly made this 22d day of May, 1906.

J. A. HELLENTHAL,
Attorney for Plaintiff.

[Endorsement]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. City of Juneau, et., Plaintiff, vs. Oscar Ashby, Defendant. Demurrer. Filed May 22, 1906. C. C. Page, Clerk. By D. C. Abrams, Deputy. Malony & Cobb, Attorney for ————. Office: Juneau, Alaska.

In the District Court for the District of Alaska, Division No. 1, at Juneau.

THE CITY OF JUNEAU, a Municipal Corporation,

Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Order Overruling Demurrer.

This matter coming on regularly to be heard upon the demurrer of the defendant, and both parties being present by their respective attorneys, and the matter being argued and the Court being fully advised in the premises, concludes that the demurrer should be overruled;

Now, therefore, it is hereby ordered that the demurrer of the defendant be and the same is hereby overruled. Defendant to have (30) thirty days in which to answer.

Dated this 3d day of July, 1906.

ROYAL A. GUNNISON,

Judge.

O. K.—MALONY & COBB.

[Endorsement]: Original. No. 542-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. The City of Juneau, a Municipal Corporation, Plaintiff, vs. Oscar Ashby, Defendant. Order Overruling Demurrer. Filed Jul. 3, 1906. C. C. Page, Clerk. By D. C. Abrams, Deputy. J. A.

Hellenthal, Attorney for Plaintiff. Office: Juneau, Alaska.

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 542-A.

THE CITY OF JUNEAU, a Municipal Corporation,

Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Answer.

Now, comes the defendant by his attorneys, and for answer to the complaint of the plaintiff herein alleges:

I.

He admits that the Common Council attempted to pass the Ordinance set out in the 2d paragraph of said complaint, but he denies that said Common Council did pass and enact such Ordinance.

II.

He denies all and singular the allegations contained in the III paragraph of said complaint.

III.

He admits that he is in possession and owns the premises described in the fourth paragraph of said complaint, but he denies that the same or any portion thereof projects into Front Street, of the Town of Juneau, as laid out and established.

IV.

He denies all and singular the allegations contained in the V and VI paragraphs of said complaint.

And for a further affirmative defence to said action defendant alleges:

I.

That Front Street in said Town of Juneau was laid out and established about the year 1893, when the public survey of the townsite of the Town of Juneau was made and approved by the Honorable the Secretary of the Interior under the laws governing the entry of townsites in Alaska, and as so established does not include any portion of defendant's premises. That said street follows and conforms to the meander line of Gastineaux Channel, upon which said town is located and contains, therefore, several angles in its course, one of which occurs at the point where defendant's property abuts upon the same. That said street throughout its length has a uniform width of 50 feet, including that portion thereof in front of defendant's said premises. That said street at all points, and especially that portion thereof in front of defendant's premises is of ample width to accommodate the public, and there is not the slightest necessity for the taking of the defendant's premises or any portion *of thereof*, for the use of the public as a street. That in truth and in fact, the purpose for which defendant's premises are sought to be condemned and appropriated by the plaintiff is to improve and benefit other private property abutting upon said street and Franklin Street

and lying near defendant's said premises, by straightening the southwesterly boundary of said Front Street, and not for the use and benefit of the public; and is an attempted taking of private property for the benefit of private individuals; all of which defendant is ready to verify.

Wherefore defendant prays that he go hence without day, and have and recover of the plaintiff his costs herein incurred.

Attorneys for Defendant.

United States of America,
District of Alaska,—ss.

Oscar Ashby, being first duly sworn deposes and says: That I am the defendant above named; I have read the above and foregoing answer and know the contents thereof and the same is true as I verily believe.

O. W. ASHBY.

Subscribed and sworn to before me this the 26th day of July, 1906.

[Notarial Seal]

J. H. COBB,

Notary Public in and for Alaska.

Copy received July 26/06.

J. A. HELLENTHAL,

By R. W. JENNINGS,

Atty. for Pltff.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. The City of Juneau, a Municipal Corporation, Plain-

tiff, vs. Oscar Ashby, Defendant. Answer. Filed Jul. 26, 1906. C. C. Page, Clerk. By D. C. Abrams, Deputy. Malony & Cobb, Attorneys for Defdt. Office; Juneau, Alaska.

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 542-A.

THE CITY OF JUNEAU,

Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Reply [to Answer].

Comes now the City of Juneau, and for reply to the answer of the defendant herein,

I.

Denies each and every allegation contained in the affirmative defense set up by the defendant in his said answer.

II.

And as a further reply to the matters and things set up in the said affirmative defense in the defendant's said answer contained, and as a further denial thereof the plaintiff alleges that Front Street, of the City of Juneau, as originally established by the property holders owning property along said street was, by mutual agreement of the said property holders established along the same lines that are laid down and designated in the Ordinance referred to in the

plaintiff's complaint, and that the defendant thereafter, and without any right so to do, extended his said building into and upon the street as so established by mutual consent.

Wherefore, the plaintiff prays that the demand of its complaint be granted.

J. A. HELLENTHAL,
Attorney for Plaintiff.

United States of America,
District of Alaska,—ss.

George F. Forrest, being first duly sworn according to law, deposes and says that he is the mayor of Juneau, the plaintiff in the above-entitled cause of action; that he has read the foregoing reply and knows the contents thereof, and that the same is true as he verily believes.

GEO. F. FORREST.

Subscribed and sworn to before me this 22d day of April, 1907.

[Notarial Seal] GUY McNAUGHTON,
Notary Public in and for Alaska.

Receipt of copy and due service of the within reply, admitted this 22 day of April, 1907.

MALONY & COBB,
Attorney for Defendant.

[Endorsed]: Original. No. 542-A. In the District Court for the District of Alaska, Division 1, at Juneau. City of Juneau, Plaintiff, vs. Oscar Ashby, Defendant. Reply. Filed Apr. 22, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. J. A. Helenthal, Attorney for Plff. Office: Juneau, Alaska.

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 542-A.

THE CITY OF JUNEAU,

Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Findings and Conclusions [of the District Court].

This cause coming on regularly for trial before me, the undersigned, Judge of the above-entitled court, without the intervention of a jury, and the Court having heard the evidence adduced by the respective parties and the arguments of the respective counsel, finds the following facts:

I.

That the plaintiff, the City of Juneau, is, and was at all the times mentioned in these findings, a municipal corporation, duly organized and existing under and by virtue of the laws applicable to the District of Alaska.

II.

That on the 4th day of May, A. D. 1906, the Common Council of the said City of Juneau did by Ordinance duly and legally open and establish a certain street in said City of Juneau, known as Front Street, between Seward Street and Franklin Street in said City, which said ordinance was passed and adopted

by the said Council on the said 4th day of May, 1906, and was and is in words and figures as follows:

ORDINANCE NO. 69.

An ordinance providing for the establishment, opening and improving of Front Street in the City of Juneau, and providing for the permanent establishment of the street lines and boundaries of said Front Street.

The City of Juneau Doth Ordain as follows:

Section 1. The Front Street in the City of Juneau is hereby opened as a public street, between the point of intersection of said Front Street with Seward Street in said Town, and the point of intersection of said Front Street with Franklin Street in said town, and the boundaries and street lines of said street are hereby established as follows:

Beginning at Point marked 1, a stone firmly set in ground with copper tack at exact point of the intersection of Main and Front Streets from which point the Southwest Corner of Block 2, an iron peg said to be one of the original corners of the town of Juneau, bears N. $4^{\circ} 41'$ W. 26.32 feet distant; thence running N. $57^{\circ} 52'$ E. 234 feet to Point II, a stone firmly set in the ground with copper tack at exact point of intersection of Front and Seward Streets from which point the N.W. corner of Block bounding Front Street on the South bears S. $60^{\circ} 56'$ E. 57.19 feet distant from said Block corner; thence said line shall run S. $81^{\circ} 35'$ E. 285.8 feet; thence S. $42^{\circ} 56'$ E. Thence beginning at Point II, the Southwest Corner of Block "G" bears N. $4^{\circ} 41'$ W.

26.32 feet from which point the North side of Front Street extends S. $83^{\circ} 4'$ E. 205.3 feet; thence N. $87^{\circ} 35'$ E. 88.7 feet to Southeast Corner of Block "G"; thence beginning at Point II, running N. $57^{\circ} 52'$ E. 5.88 feet to a point intersecting with a parallel line laid off at a distance of 24 feet from said south side of the street; thence S. $81^{\circ} 35'$ E. 343.25 feet to Point designated as Point of Intersection.

Section II. And Whereas, one Oscar Ashby and the firm of Winter & Pond claim certain possessory rights to certain tracts of tide lands abutting upon said streets and projecting into said street as the same is above established to the following extent, to wit:

Oscar Ashby holds possession of and claims a possessory right to a tract of tide lands extending into and overlapping Front Street as hereby opened and established, described as follows:

Corner No. 1 of said Lot bears S. $00^{\circ} 12'$ E. 6.7 feet from a point on line N. $81^{\circ} 35'$ W. 103 feet from point designated in above notes as Point of Intersection; thence running S. $87^{\circ} 56'$ E. 36.4 feet to corner No. 2; thence S. $00^{\circ} 12'$ E. 22.3 feet to Corner No. 3; thence N. $81^{\circ} 35'$ W. 36.8 feet to corner No. 4; thence N. $00^{\circ} 12'$ W. 18.2 feet to Corner No. 1, the place of beginning, making an area of 736.77 square feet.

Winter & Pond hold possession of and claim a possessory right to a tract of tide lands extending into and overlapping Front Street as hereby opened and established, described as follows:

Corner No. 1 of said Lot bears S. $52^{\circ} 28'$ W. 15.9 feet from a point on line N. $81^{\circ} 35'$ W. 17.7 feet from point designated as Point of Intersection, in above notes, thence running S. $52^{\circ} 28'$ W. 13.1 feet to Corner No. 2; thence N. $81^{\circ} 35'$ W. 28.7 feet to Corner No. 3; thence N. $00^{\circ} 12'$ W. 22.3 feet to Corner No. 4; thence S. $87^{\circ} 56'$ E. 13.8 feet to corner No. 5; thence S. $54^{\circ} 21'$ E. 30.9 feet to corner No. 1, the place of beginning, making an area of 687.20 square feet.

And Whereas, it is necessary in order to open said street and make the same sufficiently wide for the purpose of accommodating the traffic carried on on said street by the public, and for the purpose of accommodating the public travel thereon, that said street be opened and established to the width hereby established and declared and be freed from all obstructions therein,

Section III. Now, Therefore, be it further ordained that condemnation proceedings be commenced in the District Court for the District of Alaska, Division No. 1, by the City of Juneau for the purpose of condemning the property of the said Oscar Ashby and also the property of the said Winter & Pond, and their possessory or other rights to the tidelands on the shores of Gastineaux Channel, to the extent that the same project into the said Front Street, as hereby established, or in anywise conflict with or overlap the same.

Section IV. All ordinances, or parts of Ordinances, conflicting herewith are hereby repealed to the extent of such conflict.

Section V. This Ordinance shall be published for three successive issues, commencing on the 5th day of May, 1906, in the "Daily Dispatch," a daily newspaper, published in the City of Juneau, Alaska, and shall be posted in three conspicuous public places in said City of Juneau, and shall take effect and be in force from and after the date of its passage.

H. T. TRIPP,

Mayor and Ex-Officio President of the Common Council of the City of Juneau.

[Seal] Attest: NATHANAEL GREENE,
City Clerk.

III.

That the defendant, Oscar Ashby, is in possession of and has a possessory right to a certain piece or parcel of land situated on the shores of Gastineaux Channel, an arm of the Pacific Ocean, which said tract and parcel of land projects into and overlaps said Front Street as laid out and established by the ordinance above referred to, to the following extent:

Corner No. 1 of the said Lot of the said Oscar Ashby bears N. 82° 33' W. 59.46 feet from the point designated in the Field Notes as the Point of Intersection; thence S. 02° 01' W. 7.1 feet; thence S. 23° 45' W. 17.64 feet; thence N. 81° 35' W. 38.2 feet; thence N. 00° 18' W. 18.5 feet; thence S. 87° 59' E. 45.2 feet to corner No. 1, and place of beginning;

And that said tract of tidelands above described as project into and overlap the said Front Street includes only a part of the entire tract in the possession of the defendant, and embraces an area of 737 1/10 square feet.

IV.

That said Front Street as established by the ordinance hereinbefore referred to and so opened up and laid out is a public highway and street, and will be open to and used by the public as such highway and street, and that in order to open said street and establish the same to a width sufficient to accommodate the travel thereon by the public, it is necessary that the same be established to a width as designated in the ordinance hereinbefore referred to, and that obstructions projecting into and overlapping on said street as opened up, laid out and designated in the aforesaid ordinance be removed, and to that end it is necessary that a right-of-way be condemned over and upon the lands of the defendant to the extent that they project into and overlap said Front Street as so laid out, and as above set forth by metes and bounds.

V.

That said Front Street, so laid out and established, is located within the City of Juneau, within the exterior boundaries thereof, and connects Seward Street, a public highway in said City of Juneau, with Franklin Street, also a public highway in said city, and that the same is laid out upon the ground as shown by the map attached to the plaintiff's complaint, which said map, for the purposes of a further description of the lands sought to be condemned, and also a further description of said Street, is expressly referred to and made a part of these findings.

WHEREUPON THE COURT CONCLUDES:

1. That the lands sought to be taken are such as may be condemned by the exercise of the Right of Public Domain;

2. That the use to which the same are sought to be applied is a use authorized by law; that is to say: A Public Street.

3. That the taking of said lands of the defendant, as described in the foregoing Findings of Fact, is necessary to such use, and

4. That the lands sought to be condemned herein should be condemned as prayed for in the complaint. To all of which defendant excepted and the exception is allowed.

Done in Open Court at Juneau, Alaska, this 24th of April, 1907.

By the Court:

JAMES WICKERSHAM,

Judge.

[Endorsed]: Original. No. 542-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. City of Juneau, Plaintiff, vs. Oscar Ashby, Defendant. Findings & Conclusions. Filed Apr. 24, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. J. A. Hellenthal, Attorney for Plaintiff. Office: Juneau, Alaska.

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 542-A.

CITY OF JUNEAU,

Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Judgment.

This cause came on regularly for trial this 23d day of April, A. D. 1907, before me, the undersigned, Judge of the above-entitled court; and all the parties being present and represented in court by their respective attorneys, and witnesses having been examined and evidence adduced by the respective parties, and the argument of counsel having by the Court been heard in that behalf, and the Court being fully advised in the premises, and having made its Findings of Fact and Conclusions of Law, which are in writing and on file herein, wherefrom it appears that the plaintiff seeks to condemn the property sought to be condemned herein for a public use within the meaning of the laws applicable to the District of Alaska, and that all of the property sought to be appropriated is necessary for that purpose, and the lands sought to be condemned should be condemned as prayed for in the complaint of the plaintiff, and the Court being satisfied that the pub-

lie interests require the taking of such lands, now, therefore—

It is hereby ordered, adjudged and decreed that B. M. Behrends and Geo. P. Blair and Wm. M. Ebner, three competent persons, resident of Juneau Precinct, the same being the precinct wherein the lands sought to be condemned are situate, are hereby appointed as Commissioners to ascertain and determine the amount to be paid by the plaintiff, the City of Juneau, to the defendant Oscar Ashby as damages by reason of the appropriation of the said property, which is described as follows:

“Corner No. 1 of said Lot of the said Oscar Ashby bears N. 82° 33' W. 59.46 feet from the Point designated in the field-notes set out in the ordinance of said City of Juneau of May 4th, 1906, and entitled ‘Ordinance No. 69. An Ordinance providing for the establishment, opening and improving of Front Street in the City of Juneau, and providing for the permanent establishment of the street lines and boundaries of said Front Street,’ as the ‘point of intersection’; thence S. 2° 1' W. 7.1 feet; thence S. 23° 45' W. 17.64 feet; thence N. 81° 35' W. 38.2 feet; thence N. 00° 18' W. 18.5 feet; thence S. 87° 59' E. 45.2 feet to corner No. 1 and the place of beginning.”

The same being the property sought to be condemned by the plaintiff herein as described in its complaint.

And it is hereby further ordered that said Commissioners shall hold their first meeting at office of

B. M. Behrends, Behrends Bank, in the City of Juneau, at 11 o'clock in the forenoon of the 27th day of April, A. D. 1907, and that the compensation of such Commissioners shall be \$3.00 per day for two days each; that said Commissioners shall take the oath prescribed by law before entering upon their duties as such, and shall in all respects proceed to perform their duties in manner and form as laid down by the statutes in such cases made and provided; that said commissioners shall assess the compensation and damages of the defendant by reason of the taking of such property, and for the purpose of making such assessment the right thereto shall be deemed to have accrued on the 19th day of May, A. D. 1906, the same being the date of the service of summons herein, and its actual value at said date shall be the measure of compensation for the property taken, and the basis of damages to property not actually taken, but injuriously effected, if any, but no improvements placed upon the property subsequent to the date last above mentioned shall be included in the assessment of compensation or damages;

And said Commissioners shall, after making their findings as by law required and performing their duties according to law, report the same to the Court within the time and in the manner provided by the statute. To all of which defendant by his counsel excepted, and the exception is allowed.

Done in open court at Juneau, this 24 of April, 1907.

By the Court:

JAMES WICKERSHAM,

Judge.

[Endorsēd]: Original. No. 542-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. City of Juneau, Plaintiff, vs. Oscar Ashby, Defendant. Judgment and Order Appointing Appraisers. Filed Apr. 24, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. J. A. Hellenthal, attorney for plaintiff. Office: Juneau, Alaska.

*In the District Court for the Territory of Alaska,
First Division.*

No. 542-A.

CITY OF JUNEAU, a Municipal Corporation,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Bill of Exceptions.

Be it remembered that this cause came on for trial on the 23d day of April, 1907, before the Court upon the complaint, answer and reply; and thereupon came J. A. Hellenthal, Esq., City Attorney of the City of Juneau, for the plaintiff, and Messrs. Malony & Cobb for the defendant, and all parties announced themselves ready for trial. And thereupon the following proofs were taken before and considered by the Court, to wit:

COURT.—Proceed with this case, gentlemen.

Mr. COBB.—At the opening of this cause the defendant by his counsel objects to the hearing of any testimony in this case for the reason that the complaint fails to state a cause of action, and under the laws of Alaska a municipal corporation has no power to condemn private property by the exercise of eminent domain or otherwise.

COURT.—Overruled.

Mr. COBB.—Defendant excepts.

COURT.—Exception allowed.

Mr. HELLENTHAL.—I will call Mr. Green.

[Testimony of Nathaniel Green.]

NATHANIEL GREEN, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Please state your name.

A. Nathaniel Green.

Q. What official position do you hold in the city of Juneau? A. City clerk.

Q. Were you such city clerk in the year 1906?

A. I was.

Q. During the entire year? A. Yes, sir.

Q. As such city clerk are you custodian of the proceedings of the town council? A. I am.

Q. And of the ordinances passed by the town council? A. I am.

Q. What, if anything, do they show in regard to ordinance No. 69 entitled “An ordinance providing

(Testimony of Nathaniel Green.)

for the establishment, opening and improving of Front Street in the City of Juneau and providing for the permanent establishment of the street lines and boundaries of said Front Street''?

Mr. HELLENTHAL.—I suppose counsel will have no objection to reading the record?

Mr. COBB.—No; we have no objection. A copy may be substituted without the formality of proving it.

Q. What have you there?

A. The minutes of the meeting.

Q. You may read them.

A. "May 2, 1906. Proceedings of the Juneau City Council at a special meeting called by the mayor by written notice for the purpose of introducing an ordinance for opening and improving Front Street and establishing street lines on said Front Street held at the council chambers at 7:30 P. M. May 2, 1906. The mayor presiding. Present councilmen Digg, Fales, Hunter, Lund, McCloskey, Reck and Tripp. The chair announced the object of the meeting as stated in the notice. Mr. McCloskey introduced an ordinance entitled an ordinance providing for the establishment, opening and improving of Front Street in the City of Juneau, and providing for the permanent establishment of the street lines and boundaries of said Front Street. The ordinance was read and on motion the ordinance was referred to the committee on street, light, sewerage and wharfage. Council adjourned. Nathan Greene, City Clerk."

Q. What is the date of that meeting?

(Testimony of Nathaniel Green.)

A. May second, 1906.

Q. Was that a general or special meeting of the council? A. May second, a special meeting.

Q. Who called that meeting?

A. On written notice of the mayor.

Q. What did that notice call for?

A. It was called for the purpose of introducing an ordinance for the permanent establishment of the street line on said Front Street.

Q. By whom was that notice certified?

A. By myself.

Q. Who was it served on?

A. On the members of the council.

Q. What was the next meeting?

A. On May 4, 1906.

Q. Was that a regular or special meeting?

A. Regular meeting.

Q. Who were present at that meeting?

A. Digg, Fales, Hunter, Lund, McCloskey, Reck and Tripp.

Q. All the councilmen were present?

A. Yes, sir.

Q. Proceed.

A. This is May 4, 1906. An ordinance No. 67, entitled an ordinance providing for the establishment, opening and improving of Front Street in the City of Juneau, and for the permanent establishment of the street line and boundaries of said Front Street. The committee reported that the ordinance should be withdrawn and recommended the adoption of an ordinance No. 69 with the same title introduced at the

(Testimony of Nathaniel Green.)

meeting held May 2, 1906, and that the ordinance be published for three successive issues of the "Daily Despatch" beginning May 5, 1906. Mr. McCloskey moved that the ordinance No. 69 be adopted. Seconded by Mr. Reck. The chair ordered the roll called. Councilmen Degg, Fales, Hunter, Lund, McCloskey, Reck and Tripp voted aye. The chair declared the motion carried and the ordinance adopted.

Q. The votes were taken on that ordinance?

A. Yes, sir.

Q. Now, Mr. Green, have you a copy of the rules in reference to this ordinance? A. Yes, sir.

Mr. HELLENTHAL.—We will just offer that in evidence.

COURT.—Read it into the record.

Mr. HELLENTHAL.—Section 17. The regular meetings of the Common Council shall be held on the first and third Friday of each month, at 8 o'clock P. M. Special meetings may be called by the Mayor at any time, and upon the request of any two members of the Common Council, it shall be his duty to call such meeting. The object for which such special meeting is called shall be mentioned in the call or notice; said call or notice shall be in writing, and served upon the members of the common council prior to such meeting.

Q. You have the book there—read the rule in reference to the introduction of ordinances.

A. Section 22. All ordinances shall be introduced by a member of the Common Council at a reg-

(Testimony of Nathaniel Green.)

ular meeting thereof, or at a special meeting called for the consideration of such ordinance. Prior to the passage of any ordinance, it shall be read seriatim at a session of the Common Council when at least five members are present, and referred to the appropriate committee to be reported by said committee to the Common Council at its next regular meeting, or at a special meeting called for that purpose, when it may be taken up for final consideration and action.

Q. Read the next one.

A. Section 23. All ordinances shall be numbered in the order of their passage, and shall be entitled, such title to express either generally or specifically the subject or subjects, object or objects, embraced in or purposes of such ordinance. All ordinances shall be published immediately after their passage, in one or more issues of a daily or weekly newspaper of general circulation published in the city of Juneau.

Q. Read the next one also.

A. Section 24. All ordinances shall be in effect from and after the date of their passage, unless otherwise provided.

Q. That is all I care for from that at present. Have you the ordinance in regard to this improvement on Front Street? A. I have.

Mr. HELLENTHAL.—We now offer this in evidence.

Mr. COBB.—Is that a copy you have there, Mr. Green?

WITNESS.—This is the original.

(Testimony of Nathaniel Green.)

COURT.—It may go in with the understanding that it be copied into the record.

Mr. COBB.—We object to the introduction of the ordinance because the purpose of the ordinance is not disclosed. It is for the purpose of taking this property in controversy in this action—cutting off the angle and thereby widening the street at one point. Front Street had already been opened up for over twenty years.

COURT.—It may be admitted.

Mr. COBB.—Exception.

Q. Have you a map here? A. I have.

Mr. HELLENTHAL.—I had better offer that first.

Q. I hand you a paper marked for identification Plaintiff's Exhibit "A" and ask you what it is?

A. It is a map of a portion of the streets of Juneau. It is marked "Plat showing base line for streets and alleys in the town of Juneau and regulation of the south side of Front Street between Seward and Franklin Streets as surveyed by Elias Ruud, C. E. April 23-27, 1906."

Q. Does it show Front Street as laid out by that ordinance? A. No.

Mr. HELLENTHAL.—There is no objection to a copy of this being substituted.

Mr. COBB.—No. I have no objection. There are only the same general objections. The record may show that there is no objection to a copy being made and substituted.

(Herein insert map.)

St.



Copy 542a
 for lot a
 filed Apr 23 06
 E. P. Clark

PLAINTIFF'S E;
 317 'A'

Block

Base Line
 B 52° E 234.0

Seward St
 N 44° 06' W

Block 4
 N 83° 04' W 200.0

Front Street
 S 88° 35' E 348.25

S 81° 35' E 280.8

10.08
 538
 II 360° 50' E 57.15

2.74

PLAT
 showing
 BASE LINE
 for Streets and Alleys in the Town of
 JUNEBAU
 and
 Regulation of the South Side of
 Front Street
 Between
 Seward and Franklin Streets
 As surveyed by Elias Ruud, C.E.
 April 23-27, 1906.
 Scale 25 ft to 1 in

(Testimony of Nathaniel Green.)

[Plaintiff's Exhibit "B."]

April 23, 1907. Plff. Exhibit "B." A. W. Fox,
Deputy Clerk.

ORDINANCE NO. 69.

An ordinance providing for the establishment, opening and improving of Front Street in the City of Juneau, and providing for the permanent establishment of the street lines and boundaries of said Front Street.

The City of Juneau doth Ordain as Follows:

Section I. The Front Street in the City of Juneau is hereby opened as a public street between the point of intersection of said Front Street with Seward Street in said town, and the point of intersection of said Front Street with Franklin Street in said town, and the boundaries and street lines of said streets are hereby established as follows:

Beginning at point marked I a stone firmly set in ground with copper tack at exact point of the intersection of Main and Front Streets, from which point the Southwest Corner of Block 2, an iron peg said to be one of the original corners of the town of Juneau, bears N. 4° 41' W. 26.32 feet distant; thence running No. 57° 52' E. 234 feet to Point II, a stone firmly set in the ground with copper tack at exact point of the intersection of Front and Seward Streets from which point of the intersection of Front and Seward Streets, from which point the N.W. corner of Block bounding Front Street on the South bears S. 60° 56' E. 57.19 feet distant from said Block Cor-

(Testimony of Nathaniel Green.)

ner, thence said line shall run S. $81^{\circ} 35'$ E. 285.8 feet; thence S. $42^{\circ} 56'$ E. Thence beginning at Point II the Southwest corner of Block "G" bears N. $4^{\circ} 41'$ W. 26.32 feet from which point the North side of Front Street extends S. $83^{\circ} 4'$ E. 205.3 feet; thence N. $87^{\circ} 35'$ E. 88.7 feet to Southeast Corner of Block "G"; thence beginning at Point II, running N. $57^{\circ} 52'$ E. 5.88 feet to a point intersecting with a parallel line laid off at a distance of 24 feet from said South side of the street; thence S. $81^{\circ} 35'$ E. 343.25 feet to Point designated as point of intersection.

Section II. And Whereas, one Oscar Ashby and the firm of Winter & Pond claim certain possessory rights to certain tracts of tide lands abutting upon said streets and projecting into said street, as the same is above established to the following extent, to wit:

Oscar Ashby holds possession of and claims a possessory right to a tract of tide lands extending into and overlapping Front Street as hereby opened and established, described as follows:

Corner No. 1 of said Lot bears S. $0^{\circ} 12'$ E. 6.7 feet from a point on line N. $81^{\circ} 5'$ W. 103 feet from point designated in above notes as Point of intersection; thence running S. $87^{\circ} 56'$ E. 36.4 feet to Corner No. 2; thence S. $0^{\circ} 12'$ E. 22.3 feet to Corner No. 3; thence N. $81^{\circ} 35'$ W. 36.8 feet to Corner No. 4; thence N. $0^{\circ} 12'$ W. 18.2 feet to Corner No. 1; the place of beginning making an area of 736.77 square feet.

Winter & Pond holds possession of and claims a possessory right to a tract of tide lands extending

(Testimony of Nathaniel Green.)

into and overlapping Front Street as hereby opened and established, described as follows:

Corner No. 1 of said lot bears S. $52^{\circ} 28'$ W. 15.9 feet from a point on line N. $81^{\circ} 35'$ W. 17.7 feet from point designated as point of intersection, in above notes, thence running S. $52^{\circ} 28'$ W. 13.1 feet to Corner No. 2; thence N. $81^{\circ} 35'$ W. 28.7 feet to corner No. 3; thence N. $0^{\circ} 12'$ W. 22.3 feet to Corner No. 4; thence S. $87^{\circ} 56'$ E. 13.8 feet to Corner No. 5; thence S. $54^{\circ} 21'$ E. 30.9 feet to Corner No. 1, the place of beginning, making an area of 687.20 square feet.

And Whereas, it is necessary in order to open said street and make the same sufficiently wide for the purpose of accommodating the traffic carried on on said street by the public, and for the purpose of accommodating the public travel thereon, that said street be opened and established to the width hereby established and declared and be freed from all obstructions therein.

Section III. Now, Therefore, be it further ordained that condemnation proceedings be commenced in the District Court for the District of Alaska, Division No. 1, by the City of Juneau for the purpose of condemning the property of the said Oscar Ashby and also the property of the said Winter & Pond, and their possessory or other right to the tide lands on the shores of Gastineaus Channel to the extent that the same project into the said Front Street, as hereby established, or in anywise conflict with or overlap the same.

(Testimony of Nathaniel Green.)

Section IV. All ordinances, or parts of ordinances, conflicting herewith are hereby repealed to the extent of such conflict.

Section V. This ordinance shall be published for three successive issues commencing on the 5th day of May, 1906, in the "Daily Dispatch" newspaper, a daily newspaper published in the City of Juneau, Alaska, and shall be posted in three conspicuous public places in said City of Juneau, and shall take effect and be in force from and after the date of its passage.

H. T. TRIPP,

Mayor and Ex-officio President of the Common Council of the City of Juneau.

[Seal] Attest: NATHANAEL GREENE,
City Clerk.

[Endorsed]: "Plff's B. Ordinance No. 69."

Mr. HELLENTHAL.—That is all, Mr. Greene.

Mr. COBB.—No cross-examination.

[Testimony of Elias Ruud.]

ELIAS RUUD, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Please state your name and residence?

A. Elias Ruud; Juneau.

Q. What is your occupation?

A. Civil engineer and surveyor.

Q. Your occupation you said was civil engineer?

A. Yes, sir.

(Testimony of Elias Ruud.)

Q. What, if anything, did you do in the way of surveying the line of Front Street, in May last year, and prior to that time?

A. I fixed two permanent monuments at certain points indicated on the plat here present in Court and from there on—

Q. Indicate on the plat marked Exhibit "A"?

A. From this point I established a base line from which all references are made the north side and the south side of Front Street, between Seward and Franklin Street was established according to the wording of the ordinance introduced into the city council.

Q. Now, Mr. Ruud, you have read this ordinance, have you not—the notice as given in that way?

A. That is the one there marked Exhibit "B."

Q. You have a notice in that way?

A. At the time it was posted or published I read it.

Q. You have seen this plat marked Exhibit "A"?

A. I made it.

Q. I will ask you if Front Street as laid out on this map is as laid out in the ordinance?

A. Yes, sir.

Q. Do you know where this property is?

A. Yes, sir.

Q. I will ask you what, if anything, you did in regard to surveying the street?

A. There was no building there at the time of the survey. It had recently burned down. I could

(Testimony of Elias Ruud.)

clearly see the point where the building had stood on account of the sills being preserved. The line run according to this ordinance cut off a portion of the ground previously occupied to the extent shown on this plat.

Q. Could you state just how many square feet that cuts off?

A. If it is not marked on the note I can not recall it point blank from memory, but that represents the exact number of feet in controversy on the ground.

Q. Did you bring your notes with you?

A. No, sir. There was an original plat made where I believe the exact number of square feet was put down if I remember right.

Q. I will ask you to look at this notice in this complaint, paragraph four, and state to the Court whether or not that correctly sets out the portion of the property which extended into Front Street? Just read them over, Mr. Ruud.

A. Corner No. 1 of said lot bears north eighty-two degrees thirty-three minutes west 59.46 feet from point designated in above notes as point of intersection; thence south two degrees one minute west 7.1 feet; thence south twenty-three degrees forty-five minutes west 17.64 feet; thence north eighty-one degrees thirty-five minutes west thirty-eight and two tenths feet; thence north no degrees eighteen minutes west 18.5 feet; thence south eighty-seven degrees fifty-nine minutes east 45.2 feet to corner No. 1, the place of beginning.

(Testimony of Elias Ruud.)

Q. That is the portion of Mr. Ashby's property which extended into the street?

A. Into Front Street, according to this survey.

Q. I would like to have you tell us how much there is in that strip of ground?

A. That is quite easy.

Q. You may leave the stand, and I will call you in a minute or two and you can tell us.

That is all.

Cross-examination.

(By Mr. COBB.)

Q. In making this plat I will ask you if you have represented the front of Oscar Ashby's lot on this plat in accordance with what it was at the time the old building was burned?

A. As near as I would identify the place by the remaining sills—those that still remained.

Q. It was your intention to show where the old building was? A. Yes, sir.

Q. Have you made any attempt to show what ground he claims there as now occupied by the two buildings erected since? A. No, sir.

Q. You don't know?

A. I have no knowledge of the extent of his claim.

Q. Did you not make this survey—in making it attempt to locate and show the boundaries of Front Street as it had been laid out at the time of the original townsite survey? A. No, sir.

Q. You simply followed the field-notes as given you in the ordinance?

A. I follow the lines.

(Testimony of Elias Ruud.)

Q. Have you ever measured the distance of the street in front of the Ashby property as it now stands—the distance across and the width of the street? A. No, sir.

Q. You don't know how wide it is?

A. No, sir.

Q. Don't you know that it is as wide there as it is anywhere along the street? A. I don't.

COURT.—Is it or is it not?

A. I believe it is.

Q. It is as wide there as anywhere else?

A. I believe so—I don't know.

Q. The effect of the change in the street as made in this ordinance is to simply cut off the front of Mr. Ashby's property and some other property and widen the street at that point?

A. Certainly—widen the street at that point.

Q. And also takes off the southeasterly boundary line of the street and makes an angle which conforms to a similar angle on the north line of the street, about one hundred feet?

A. It leaves no angle on the south side.

Q. It conforms to the angle on the other side?

A. No, sir.

Q. In other words, it straightens the south boundary line, and leaves the north line the same?

A. It did not affect the north line.

COURT.—It widens the street?

A. Yes, sir.

That is all.

(Testimony of Elias Ruud.)

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. You told Mr. Cobb that you did not run that line in reference to the lines of the original townsite? Front Street is not delineated on that side?

A. No, sir.

Q. What was that shown as?

A. Waterfront Street was delineated on the original. Mr. Cobb asked me—

Mr. COBB.—I asked him whether he ran it in compliance with the original townsite plat.

COURT.—Was there any street laid out?

A. The south side of the street was not laid out so that it could be traced on the original survey.

Q. The south side of the street was not laid out—it has only been laid in at different times?

A. Yes, sir.

Q. The line on the south side of the street as laid out here is straight from where it commences to the corner? A. Yes, sir.

Q. The property of Mr. Ashby which you have described extended into the street to the extent of that line?

A. Yes, sir; to the extent as shown on the plat.

Q. The plat properly shows that?

A. Yes, sir.

That is all.

Mr. HELLENTHAL.—There is a question raised in the answer that there is no necessity for laying out the street, and I want to call a witness on that question. I will call Mr. Casey.

[**Testimony of W. W. Casey.**]

W. W. CASEY, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your business?

A. Transfer business.

Q. In the transfer business, you have had considerable experience in teaming in the city of Juneau?

A. Yes, sir.

Q. Are you familiar with the intersection of Front and Franklin Streets?

A. Yes, sir.

Q. I will ask you if you have had teams go around that corner?

A. Yes, sir.

Q. I will ask you if it is possible for a four-horse team to clear that corner?

A. It would depend on the kind of load they had.

Q. I am speaking of a four-horse load?

A. He could, with a short load, but with long timbers it would be impossible to make such a turn without a great deal of difficulty, if he could do it at all.

Q. Is the street narrow at that point?

A. The turn is short—it would be impossible to turn with a long load.

Q. Could you make that turn with a four-horse load?

A. For the ridge road?

Q. Usually when you drive a four-horse team, is that the ordinary road?

A. It would be a hard matter—we never use it.

(Testimony of W. W. Casey.)

Q. Otherwise, would you have any occasion to use it?
A. It is the natural way of going.

That is all.

Cross-examination.

(By Mr. COBB.)

Q. Do you know how many teams there are in Juneau?
A. About forty horses.

Q. How many teams?

A. About twenty teams—in the neighborhood of twenty teams, excepting the company teams.

Q. How often have you had occasion to drive and go around there with a four-horse team?

A. Probably once a week; last summer we have had to do that way on account of the hill—it is an easier hill.

Q. There are corners in Juneau which are harder than that one?

A. There are one or two equally as bad that we cannot make.

Q. You have never been compelled to stop on account of the door or porch of the house opposite to where you lived last year?

A. In trying to make the turn?

Q. How is it with the ordinary team—ordinary transportation?

A. You cannot drive north.

Q. You can turn those corners all right?

A. Yes, sir.

Q. There is not a great amount of teaming outside of the regular haulers?

A. I don't know that there is.

(Testimony of W. W. Casey.)

Q. There is no teaming in this town except what is down by professional teamsters—those engaged in the business?

A. One or two teams, that is all.

Q. The public generally do not have teams?

A. No, they permit us to do the work.

Q. So that to move those houses twenty or thirty feet is for the convenience of the teamsters?

A. I did not know what the object of this suit was.

Q. Would you say—you know what the street is—is it narrower there than at any other place?

A. I never measured it.

Q. It looks about as wide?

A. Pretty nearly.

Q. What interest has the public at large in this suit except you teamsters? A. I don't know.

Q. You don't know that there is any interest in it? A. I don't know.

That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. All the stores have their delivery wagons?

A. Yes, sir.

Q. The different mining companies have teams?

A. Yes, sir.

Q. Could two ordinary teams pass—one coming down Franklin, and one coming down Front Street pass? A. Single teams could.

Q. They would have to be careful?

A. They are almost as bad.

(Testimony of W. W. Casey.)

Q. Explain to the Court how Franklin Street—the streets there at the corner come together?

A. I could not do that very well.

Q. Explain it to the Court—whether it is a sharp angle or a straight line?

A. Well, Franklin Street is as it is shown on this map. This being Front Street, this shows the widened portion here. A good deal of the work comes from the wharf. Come up this way—it is a hard point to turn round up here, because the buildings on this side are built out in here. You might get off the Union wharf and come back and get up there very easily—there are only one or two corners in town that are as bad as that. I do a good deal of hauling up to the basin, and it is not nearly as bad as that corner to turn.

That is all.

(By Mr. COBB.)

Q. How long is that piling in here?

A. About seventy feet.

Q. You don't have many long loads coming up this way, do you?

A. You could not turn out there with a derrick.

Q. You say, most of the business is from the wharf?

A. Most of it.

Q. Two of the wharves are situated at the foot of the main street?

A. Yes, sir.

Q. Hauling from there, do you go down Front Street or around this way?

A. This is the easiest way to get down.

Q. It is the furthestest way around?

(Testimony of W. W. Casey.)

A. Not necessarily—you can turn at Crew's house—you have to go up there.

Q. That is two blocks further up the street?

A. Down here you can go up two blocks—the angles are such that you cannot get by.

Q. That has nothing to do with this point?

A. That is only one reason why we have to go down this way.

Q. There would be no trouble except with a four-horse team and a long load?

A. With a long load; yes.

Q. That is, with extraordinary long pieces?

A. We do a good deal of it.

Q. What you mean is heavy mining timbers?

A. Long lumber, where you couple your wagon out.

Q. You are speaking of mining timbers?

A. Where you couple out your wagon—couple out your teams.

Q. You do not mean to tell the Court that you cannot get any load up to the basin—that you would be prevented by that corner, that you would not be stopped by others?

A. Well, that would be a bad corner to make.

Q. You would not state that it would be the corner that would stop you—if you could not get by that corner with your load, would there be any other corner you could not pass?

A. No, this is the worse corner in town. It would be the hardest turn.

(Testimony of W. W. Casey.)

Q. In that event would there be any necessity for passing up there at all?

A. You might get out some other way.
That is all.

(By Mr. HELLENTHAL.)

Q. That is the best grade?

A. That is the best street.
That is all.

Mr. HELLENTHAL.—I will recall Mr. Ruud.

[**Testimony of Elias Ruud—Recalled.**]

ELIAS RUUD, a witness heretofore called and sworn on behalf of the plaintiff, being recalled, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Have you figured out the number of square feet that Mr. Ashby's property overlaps into Front Street as laid out in that plat?

A. Yes, sir. Seven hundred thirty-seven and one-tenth square feet or eighty-one and five-tenths square yards.

Q. Front Street, as laid out by you, is in a direct line with the exception of the Ashby property?

A. I don't understand.

Q. Front Street, as laid out on this plat, is as it is on the ground.

A. It is laid out on the ground exactly as it is here.

(Testimony of Elias Ruud.)

Q. The ordinance lays out Front Street exactly as it is on the ground with the exception of the Ashby property?

A. As it is now, as far as you can judge from the buildings and the occupation of the ground. I do not know that it would have to be changed at all.

That is all.

[Testimony of Lewis Lund.]

LEWIS LUND, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your name?

A. Lewis Lund.

Q. What is your occupation?

A. Teaming.

Q. Are you familiar with the corner of Franklin Street and Front Street in the town of Juneau?

A. Yes, sir.

Q. Do you know, Mr. Lund, whether an ordinary team with a load can turn that angle without widening out the street—at that sharp point?

A. You can make the turn now, but if they build out that corner you can't.

Q. You mean if there is a building on that corner so that you have to remain in the street and not go on the sidewalk; if a sidewalk is built out there can you get around that angle with a load?

A. I don't hardly think you can.

That is all.

(Testimony of Lewis Lund.)

Cross-examination.

(By Mr. COBB.)

Q. You and Mr. Casey are the only teamsters in town? A. No.

Q. Who else is there?

A. There are private teams.

Q. The mining companies' teams?

A. Yes, sir.

Q. Who else?

A. The storekeepers and hotels.

Q. They have little delivery wagons—they have no trouble?

A. They all go around that corner.

Q. Would they have any trouble turning with a delivery wagon? A. I don't think so.

Q. It is simply to accommodate you and Mr. Casey? A. I do not think so.

Q. Who else does it help?

A. People generally.

Q. The street there is over fifty feet wide—you never saw the street crowded? A. Yes, sir.

Q. Have you ever seen such a crowd that they could not get by?

A. They use about twenty-seven feet of that lot.

Q. How much?

A. I think twenty-five or twenty-seven feet of the lot goes out there.

Q. Goes out where?

A. Out through the line.

Q. Do you mean that the corner comes out twenty-seven feet into the street?

(Testimony of Lewis Lund.)

A. The telephone pole will come out twenty-seven feet from place where it is now.

Q. Where is it now?

A. It stands away back on the lot.

Q. Whereabouts on the lot? I want to see if I can get your meaning.

A. Well, it sets pretty near on the corner and we drive over that lot. It is all planked over and then there would have to be a six-foot sidewalk and the telephone pole would come out further yet.

Q. If you put the telephone pole in the middle of the street that is where your trouble is going to begin?

A. Yes, sir.

Q. I want to ask you if the street in front of Oscar Ashby's property is not as wide as it is further up the street in front of Mr. Young's and Mr. Shattuck's?

A. It is at the present time until they build on that lot.

Q. Even then there will be fifty feet between this lot and the Ashby property?

A. I suppose so.

Q. And that will be just as wide as it is 200 feet further up toward the main part of town.

A. This sharp corner—the strip sticks out into the street.

Q. There is a sharp corner at the intersection of Seward and Front Streets, too?

A. Well, it comes right out here. It is cut off the corner—it swings out here.

(Testimony of Lewis Lund.)

Q. Do you know how many teams there are in this town? A. I know pretty nearly.

Q. The stores have little delivery wagons?

A. Yes.

Q. And all the teams in this place are owned by you and Mr. Casey with the exception of one or two owned by the Perseverance Company?

A. Yes.

Mr. COBB.—That is all.

COURT.—That is all the testimony I need along that line unless there is some denial of it.

Mr. HELLENTHAL.—There is just a little testimony I forgot to offer. I would like to call Mr. Jorgenson.

[Testimony of J. P. Jorgenson.]

J. P. JORGENSON, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name.

A. J. P. Jorgenson.

Q. Do you live in Juneau? A. I do.

Q. How long have you lived here?

A. Twenty-odd years.

Q. Do you know where Front Street and Franklin Street are? A. Yes, sir.

Q. Do you know where they were first laid out by the first settlers? A. Yes, sir.

Q. Do you know where Oscar Ashby's property?

(Testimony of J. P. Jorgenson.)

A. Yes, sir.

Q. Was Oscar Ashby located there at that time?

A. The first building that Oscar Ashby had built there I built for him in 1888. The line of the street came inside of his building at that time I think about twenty feet. He was building a dance-hall and he wanted it up by the Fourth of July.

Mr. COBB.—Objected to as immaterial.

COURT.—Objection overruled.

Mr. COBB.—I will save an exception.

Q. Go ahead.

A. The line was established—I had Mr. Garside—I had to place different piling where the Louver is. I had Mr. Garside establish the line for me to build by. Mr. Garside established the line from Charley Young's down toward J. G. Peterson's store. After Mr. Garside established the line Mr. Ashby wanted Young and Peterson to let his building extend further out in the street. He wanted it up by the Fourth of July and he had neither piles or timber to extend the foundation over the deep water, and we agreed to let him build it out there. He said, "Any time you want the street on a line I will tear it down." That was said in the presence of C. W. Young, J. G. Peters and myself.

Q. That line is identical with the line as laid out here?

A. No, it is not exactly that, Mr. Hellenthal. That angle strikes the same place. I think the angle has shortened up this side on this side. The first line is the same, but it differs a little by McCloskey's.

(Testimony of J. P. Jorgenson.)

Q. The south side, then, so far as the Ashby and Winter & Pond line is exactly the same as Mr. Gar-side laid it out?

A. It is shown in the application.

Q. How was that line established?

A. By an agreement with the property owners—the line was laid off at that time.

Q. There was no street line? A. No, sir.

Q. All the property owners including Mr. Ashby?

A. It was included in the line at the time he built it.

That is all.

Cross-examination.

(By Mr. COBB.)

Q. You own the property situated one block northwesterly or westerly from Mr. Ashby's property? A. Yes, sir.

Q. The effect of straightening this line will give the street on that side a straight run passed your property instead of having an angle there?

A. Yes, there is a building sticking out in the street.

Q. The angle of the street as it has been used for the past fifteen or twenty years makes an angle in there?

A. No, it don't make an angle; it projects into the street.

Q. It does not?

A. The property went up straight against the Louver.

Q. I understand—

(Testimony of J. P. Jorgenson.)

A. There is no line there that I have ever seen. The Louver sticks out into the street.

Q. I am not speaking of the Louver.

A. I don't see any other angle—I never have.

Q. If you cannot see that I do not think you are a competent witness. You may stand aside.

That is all.

Plaintiff rests.

Testimony for Defendant.

[Testimony of G. W. Garside.]

G. W. GARSIDE, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your profession, Mr. Garside?

A. Civil engineer and mining engineer.

Q. How long have you been such civil and mining engineer? A. Since 1869.

Q. How long have you resided in Juneau?

A. Twenty-three years.

Q. Are you the same G. W. Garside who made the townsite survey of the town of Juneau and laid out the streets here after the survey? A. Yes, sir.

Q. At the time you laid out the definite survey did you lay out Front Street?

A. In 1893; yes, sir.

Q. I now hand you a blue-print, Mr. Garside, and ask you what it is?

(Testimony of G. W. Garside.)

A. This is a blue-print representing the junction of Franklin and Front Street. This is Front Street and this is Franklin Street—this is the point of junction of the two streets.

Q. Did you make the drawing from which this blue print is taken? A. Yes, sir.

Q. From the actual survey?

A. A copy of the 1893 survey.

Q. And in measuring it—in surveying it did you measure it on the ground?

A. Yes, very accurately.

Mr. COBB.—We offer it in evidence.

Mr. HELLENTHAL.—I think it is immaterial.

COURT.—It may be admitted.

(Whereupon the following map was filed and marked as Defendant's Exhibit No. 1.)

(Here insert map.)

J U N E A U

B G

Lot

patent

SUBD SIGNAL SURVEY 893

GROUND OFFICIALLY EXCLUDED FROM SITE TRUSTEE AND CONFIRMED BY THE GENERAL LAND OFFICE AND SECRETARY OF SUBDIVISIONAL SURVEY

F R O N T

U N I V E R S I T Y S T R E E T

SUBDIVISIONAL SURVEY 893

50.00' front

LOUVE THEATRE BURNED MAP B. 905

POSSESSORY TITLE

G O V E R N M E N T

J U N E A U

1000 GARDNER

F R O N T

1000 GARDNER

DEFENDANT'S EXHIBIT No

Apr 21 1907
Defendants Ex.
A. H. Fox
Rep. Clerk

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MAY 18, 1905

TIDE LAND EMBRACED IN STREET AT TIME OF SUBDIVISIONAL SURVEY 1893 TO CONFORM WITH UPLAND LOTS

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SCALE 10 FEET = 1 INCH

(Testimony of G. W. Garside.)

Q. Explain that map to the Court. Point out on that plat the property of Oscar Ashby?

A. (Indicating.) It is marked right there on the plat.

Q. What does the line—the smaller line lying northerly of the heavy line represent?

A. That is the old Louver.

Q. Where is the front of the building on the Ashby property? A. On the shaded line.

Q. Is the line of the proposed southerly line indicated on this plat?

A. This is it the shaded line.

Q. What is the proposed line?

A. The dotted line.

Q. Have you measured the width of the street?

A. Yes, sir.

Q. What is the width of it in front of the Ashby property? A. Fifty feet.

Q. Is it any narrower there than any where else?

A. It is wider there than at any other place except Charley Youngs is four feet on the street; that is the widest part.

Q. The widest part extends from in front of Jorgensons to the intersection of Franklin Street?

A. Yes, sir.

Q. What is indicated by those fine dots?

A. This represents the tide lands—the townsite of Juneau is the blue and this is supposed to represent it here. This is the patented ground.

Q. The Ashby property is on the tide land?

A. Yes; all above that is patented.

(Testimony of G. W. Garside.)

Q. Where is the corner of Mr. Jorgenson's property?

A. Just about here it comes to that corner right there. That is the corner that was established in 1893. That is the most easterly corner—Mr. Jorgenson—that is approximately—I don't know whether it is exactly—that line has never been located with any system.

Mr. HELLENTHAL.—I want to object to this witness testifying about laying out the street on a line that was not settled—he would have no authority to lay out the street.

Q. How long have you resided here Mr. Garside?

A. About twenty-three years.

Q. The street as now laid out is the same as it has been during that period of time?

A. Yes, sir.

Q. Has there ever been any trouble or inconvenience from the narrowness of the street?

A. No, sir.

Q. The whole of Second Avenue is still narrower?

A. I do not think that the road in Second Avenue is fifty feet wide.

Q. Have you ever seen any trouble or necessity for the widening of the street? A. Never.

Q. Do you know, Mr. Garside, for what purpose the men who compose the city council want that corner cut off?

Mr. HELLENTHAL.—We object to that as immaterial.

A. I don't know.

(Testimony of G. W. Garside.)

COURT.—He says he does not know.

Q. What is the width of the street, approximately?

A. Thirty-four feet above the intersection and fifty feet below.

Q. That is as it was in the townsite plat?

A. Yes, sir.

That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. The Louver building as it formerly stood extended even further into the street according to your line of survey? A. Yes, sir.

Q. When did you make this survey?

A. In 1893.

Q. Where is the original note to the 1893 survey? A. In my office.

Q. Was that an official survey?

A. Not official; I don't think so.

Q. You had nothing to do with the townsite—the townsite only extended to the high water mark?

A. No, sir.

Q. That is all you surveyed?

A. No; I surveyed the street.

Q. That is all you laid out on the official plat?

A. Yes, sir.

Q. You laid out no part of Front Street except the portion on the upper side of the street?

A. Not officially—no, sir.

Q. That is the north side of the street?

(Testimony of G. W. Garside.)

A. Yes, sir.

Q. That you merely did as an individual?

A. On the petition of the several settlers.

Q. Who were they?

A. Mr. Maloney, Charley Young, Oscar Ashby—

Q. All those parties are out of town?

A. I don't know.

Q. Did Mr. Jorgenson petition you to do that?

A. I have forgotten.

Q. You have forgotten?

A. I don't think he did—I think Charley Young did.

Q. You know that Charley is at the Hot Springs?

A. I don't where he is.

Q. That is all you had to do with the laying out of the angles?

A. The buildings never conformed to the angles laid out.

Q. The buildings of Mr. Peterson were built long before that?

A. I don't remember exactly.

Q. Don't you know that they were built before that? A. In 1893?

Q. Don't you know that they were built fifteen years ago?

A. It is built a little on the street.

Q. They never extended to your line?

A. No, sir.

Q. They extended up to the line?

A. They were about four feet back of that line.

(Testimony of G. W. Garside.)

Q. The only buildings which extended into the street is this Louver building and the little Pond store?

A. At that point; yes, sir.

Q. And that line is a straight line run down from the top here—this one running down in front of Young's store?

A. Yes, sir, that dotted line.

Q. That ran in front of Peterson's lot?

A. Yes, sir.

Q. And all those building are practically up to that line except the Louver and the Winter & Pond little corner?

A. Yes, sir.

That is all.

Redirect Examination.

(By Mr. COBB.)

Q. Mr. Garside, in laying out Front Street how came you to make so many angles and corners in it?

Mr. HELLENTHAL.—I object to this witness testifying in regard to those matters. He testified that he had no right to lay out that side of the street.

COURT.—He may show what he did do at the request of the people—the owners of the property.

Q. How did you come to make that line in there?

A. I followed the lower line of the water line.

Q. The upper line on the land above tide water that was established by the official survey and this lower line was established on petition of the owners of the property?

A. Yes, sir.

That is all.

(Testimony of G. W. Garside.)

Recross-examination.

(By Mr. HELLENTHAL.)

Q. What kind of a petition did they present to you?

A. They all agreed to pay so much—some fifty and some sixty and they all agreed to it.

Q. They applied to you individually?

A. Just as a private survey.

Q. They petitioned you as a private surveyor and consented to do that in the petition?

A. Yes, sir.

Q. You say you laid out the lower side of the street so as to conform to tide water?

A. No, sir, nothing to do with tide water.

Q. The exterior boundaries of the townsite follows the line of high tide?

A. Approximately as near as you can get at it. That is all.

[Testimony of Richard Johnson.]

RICHARD JOHNSON, a witness called on behalf of the defendant, having been first duly sworn testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. Please state your name.

A. Richard Johnson.

Q. You live in Juneau? A. Yes, sir.

Q. How long have you lived here?

A. About eighteen years.

(Testimony of Richard Johnson.)

Q. Do you know the Oscar Ashby property—
which is in controversy in this suit?

A. Yes, sir.

Q. You know in a general way the width of the
street—Front Street? A. Yes, sir.

Q. You know the width of the street in front of
that property? A. Yes, sir.

Q. Is it as wide there as it is at any other point
along the street? A. Yes, sir.

Q. Mr. Johnson, have you ever seen any conges-
tion of business or trouble there on account of the
lack of sufficient width of the street?

Mr. HELLENTHAL.—We object to him testify-
ing in regard to that.

COURT.—Overruled.

Q. Have you ever noticed that?

A. I never have.

Q. Have you been familiar with the street and
the uses to which it has been put for the past eigh-
teen years? A. Yes, sir.

Q. I will ask you, Mr. Johnson, if there is any
public necessity for widening that street by cutting
off some ten or twelve feet of that property on the
southerly side of the street?

Mr. HELLENTHAL.—Objected to as immate-
rial.

Q. Is there any necessity for the widening of it?

A. None, that I can see.

Q. About on an average could you state about
the average about how many teams and wagons meet
there?

(Testimony of Richard Johnson.)

A. Meet on the street at that place?

Q. Yes, at that place?

A. I don't know not very frequently.

Q. Have you ever seen teams so bunched up there that there was not sufficient room for them to pass?

A. No, sir.

That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You never drove a team in this town?

A. No, sir.

Q. You are Mr. Ashby's agent here, are you not?

A. Yes, sir.

That is all.

[**Testimony of J. J. McGrath.**]

J. J. McGRATH, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. Please state your name.

A. J. J. McGrath.

Q. Where do you reside? A. Juneau.

Q. How long have you lived here, Mr. McGrath?

A. Since '82.

Q. Are you familiar with the property of Oscar Ashby? A. To a certain extent.

Q. You know where it is? A. Certainly.

Q. Do you know the width of the street there as compared with the width of the street up further?

(Testimony of J. J. McGrath.)

A. I think it is a little wider.

Q. A little wider than it is up toward the Occidental? A. Yes, sir.

Q. In the years that you have been here have you ever seen that street crowded with traffic?

A. No, sir, nor any other street.

Q. Have you ever seen it so crowded that people could not pass?

A. No, sir, I have not.

Q. Is there any necessity for widening that street?

A. You might widen Seward Street and Second Avenue, there is about as much sense in that as there is in this.

Q. Is there any necessity for doing it?

A. I don't think there is.

That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You have never driven a team here in town?

A. No, sir.

Q. You don't know anything about it then?

A. Just let me explain. I have seen them last summer load down here and drive up Main Street up Seward Street and turn at Second Street and turn up to the Basin I never saw any inconvenience in that.

Q. Did you have any experience in that?

A. They don't have any occasion to go that way when they come up from this wharf.

(Testimony of J. J. McGrath.)

Q. This time they had no occasion to go up there?

A. No, sir.

That is all.

Redirect Examination.

(By Mr. COBB.)

Q. How wide are those streets?

A. This one is about twenty-two feet on Second Avenue.

Q. They don't have any sharp angle going up that way?

A. I think there is a sharp angle there.

That is all.

[**Testimony of Frank Young.**]

FRANK YOUNG, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. Please state your name.

A. Frank Young.

Q. Where do you reside? A. Juneau.

Q. How long have you resided here?

A. About twenty-two years.

Q. Do you know Oscar Ashby's property here on Front Street? A. I do.

Q. Do you know the street in front of it?

A. Yes, sir.

Q. I will ask you if you know the comparative width of the street at that point and what it is further easterly toward the Occidental?

(Testimony of Frank Young.)

A. I guess it is fully as wide as it is at the other end.

Q. During the time that you have been here have you ever noticed any congestion of traffic or any team not being able to get up that way for want of sufficient room to go through that fifty foot space?

A. I don't think I ever did.

Q. Is there any public necessity for the taking of the property along the south side of the street for the purpose of widening that street at that particular point?

A. Well, in order to make the haul going to the basin if the buildings were extended out to the street on the opposite side of the line of the present street persons hauling long timber going to the basin might.

Q. That is not necessary now?

A. I mean for ordinary freight loads, no.

Q. All the traffic of this town is up on this street?

A. Well, ordinary travel it might not be, but for hauling long timber it should be widened, but for ordinary teaming a person can get along as it is.

Q. You have got along for eighteen or twenty years and had no trouble at any time?

A. Not that I know of. It would make it look a great deal better.

Q. The looks then are what you go on?

A. Yes, sir.

Q. It would help the other property then?

A. I don't know—it would help the looks.

Q. It would help the looks of the other property?

(Testimony of E. R. Jaeger.)

A. I think it would.

That is all.

Rebuttal Testimony.

[Testimony of E. R. Jaeger.]

E. R. JAEGER, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Please state your name.

A. E. R. Jaeger.

Q. Where do you live? A. Juneau.

Q. Whereabout? A. Near the Franklin.

Q. Do you know the condition at the corner of Franklin Street and Front Street?

A. Yes, sir.

Q. Do you know where Oscar Ashby's property is situated? A. I do.

Q. Do you know the lines as laid out by the city council of the street in front of that property?

A. I have a very good general idea.

Q. Do you know how that intersects the street at that point? A. Yes, sir.

Q. Do you know whether a loaded team can get around that corner?

A. As the corner is now it can get around.

Q. I mean taking it if the buildings were built out to the street?

A. It would be much harder.

(Testimony of E. R. Jaeger.)

Q. I am not talking about going on other people's property I am talking about keeping in the regular street.

A. In my judgment it would be a difficult matter to get around there with an ordinary team and with a load it would be very much harder.

Q. I will ask you if in your judgment there is any ordinary public necessity for condemning that property and straightening out that street?

A. I think there is.

That is all.

Cross-examination.

Mr. COBB.—Q. You own some property situated a little southerly from the point of intersection on Franklin Street? A. Yes, sir.

Q. You particularly desire to have that done as a benefit to your property?

A. It will make it better but it will benefit the man up on the hill, Mr. Cobb.

Q. You were very instrumental in getting up this ordinance?

A. I don't hardly believe I was in the council then.

Q. I asked you if you were not instrumental in getting up this ordinance?

A. If I was I do not have any recollection of it.

Q. Don't you know you were?

A. I do not.

Q. Have you ever seen any congestion of traffic at that point?

(Testimony of E. R. Jaeger.)

A. What do you term congestion. I do not think we have any congestion any place in town.

Q. The only trouble that you claim is about in making the sharp turn and go north along Franklin Street?

A. That certainly would be very difficult.

Q. That is not due to the narrowness of the street but due to the sharpness of the angle?

A. Not entirely. It is a bad angle but if the street is full width it would be better.

Q. Is it not as wide there as it is at other points on the street? A. No, sir.

Q. Is it not already a full width street?

A. The street proper, I do not think it is.

Q. I mean the distance between the Oscar Ashby building and the property across the street?

A. Over to the barber shop?

Q. Yes.

A. I think it is as wide there as it is further down the street.

Q. So that the only trouble that you can see is the long, sharp angle between Franklin Street and Front Street that projects down between the two streets?

A. No; that is not the only trouble the building is out in the street.

Q. You mean as the street now is it is in the street?

A. I mean if it was where it belongs.

Q. What do you mean?

(Testimony of E. R. Jaeger.)

A. Exactly what I say—that the Oscar Ashby building is standing in the street. That is what I mean.

Q. Do you mean as it now is?

A. The street as it is now laid out and as it has been for the past twelve years.

Q. Do you know that the street was used for the past twelve years. Has not there been a building on it for the past twenty years?

A. The street is the same.

Q. On the property which is in controversy in this suit? It has not been used for a street?

A. Not that property. But it should have been instead of the building being set out in the street.

Q. And you refer to the street as now laid out—it should have been on the street?

A. I refer to the street as it is used at the present time with the exception of those two buildings. That is all.

(By Mr. HELLENTHAL.)

Q. You say it would benefit the property—what property?

A. It would benefit every piece of property there.

(By Mr. COBB.)

Q. How would it benefit the property up there by the hospital?

A. It would benefit it in the same way that any improvement would benefit it—any other improvement, any public improvement.

Q. Is that the best answer you can give?

(Testimony of E. R. Jaeger.)

A. How is that?

Q. Is that the best and only answer you can give?

A. No, I can give you other.

Q. Tell me how it would benefit that property up on the hill?

COURT.—Counsel are making a poor record. I do not care for any arguments with the witness.

That is all.

[**Testimony of G. F. Forrest.**]

G. F. FORREST, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name.

A. George F. Forrest.

Q. You are the mayor of Juneau?

A. Yes, sir.

Q. Where do you live?

A. On Front Street.

Q. Are you familiar with the streets of the town of Juneau? A. Yes, sir.

Q. Do you know the Oscar Ashby property?

A. Yes, sir.

Q. Do you know the condition of the highway about there? A. Yes, sir.

Q. You may state whether or not it is a public necessity to straighten out that street?

Mr. COBB.—We object to him answering that until he has qualified himself.

(Testimony of G. F. Forrest.)

COURT.—Overruled.

A. I think so.

Q. Could a team coming down that hill on a slippery day—could they turn that corner and come down Front Street?

A. One or two horse teams could.

Q. If they were well shod? A. Yes, sir.

Q. Could a long team with a long load do it?

A. It would be very difficult.

Q. If this property is condemned and the street straightened out, will that change the condition in reference to going around that corner?

A. It will very materially.

Q. That will make it possible to turn that corner with any kind of a load?

A. It would be easier to turn the corner going up than it would coming down on account of the sharpness of the angle.

Q. I say by removing those buildings and obstructions the difficulty will be overcome?

A. Yes, sir.

That is all.

Cross-examination.

(By Mr. COBB.)

Q. Have you ever seen any difficulty caused by the conditions at that point? A. No, sir.

Q. You never have? A. No, sir.

Q. How long have you lived here?

A. Fourteen years.

Q. During all that time you have seen no difficulty at that point?

(Testimony of G. F. Forrest.)

A. No, sir, there is no building on the street there now.

Q. On which property?

A. Opposite the Louver property.

Q. Have you ever noticed particularly—you say if there would were buildings constructed there you refer to the sharp point? A. Yes, sir.

Q. Have you noticed that particularly?

A. Yes, sir.

Q. Then to provide against something that may take place in the future you wish that property condemned? A. That is the idea.

Q. There is at this time no public necessity for doing that?

A. Not if there is no improvements on the other property.

That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. If there is no improvements made on this property you think it would not be necessary?

A. Unless that angle is improved—of course there would be a necessity for it if it was built up.

Q. If you use Mr. Corcoran's property for a street you don't have to use somebody else's property. A. That is it.

That is all.

(By Mr. COBB.)

Q. You don't see any more difficulty in going up that hill than you do any other only on account of the sharp angle? A. No, sir.

That is all.

[**Testimony of James McCloskey.**]

JAMES McCLOSKEY, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Please state your name.

A. James McCloskey.

Q. Where do you live?

A. Juneau, Alaska.

Q. How long have you lived here?

A. Eleven years yesterday.

Q. Are you familiar with the premises at the intersection of Front Street and Franklin Street?

A. Yes, sir.

Q. Do you know the condition and the location of the Ashby property? A. Yes, sir.

Q. State whether a team can go around that corner without inconvenience—a loaded team, I mean?

A. A team with a short load can go around—a team a single team with a long load cannot go around.

Q. That corner is bad it has a bad turn for a team? A. Always.

Q. It is the most feasible route to go up town?

A. Yes, sir.

Q. That haul has the best grade?

A. Yes, sir.

Q. Now, with reference to the Ashby property and the whole street as it is laid out—all the build-

(Testimony of James McCloskey.)

ings conform to that line except the Ashby and Pond buildings do they not?

Mr. COBB.—Objected to as immaterial.

COURT.—Overruled.

A. I think so.

That is all.

Cross-examination.

(By Mr. COBB.)

Q. You introduced this ordinance for the cutting off of this property? A. I believe so.

Q. This map shows the property. Where is your property? Where would it be about where—here is Franklin Street?

A. This is Franklin Street here—about in there.

Q. This is the corner in here?

A. My property would be about in there.

Q. This is the southerly line of the street—there is the Ashby property?

A. That is the Pond corner here.

Q. Yes.

A. My property would come right there.

Q. That is the middle of the street?

A. That is the lower side of the street—I don't own any property there.

Q. You are running a business there?

A. Yes, sir.

Q. Where is your business located?

A. About here.

Q. This street as laid out here—this is the line—that is the line of intersection of the streets?

(Testimony of James McCloskey.)

A. My property would be right here.

Q. It brings Front Street right in line with your property?

A. Well—property—the property that I have my business in?

Q. The business that you are running?

A. Yes, sir.

Q. It would place your property practically around on the street—make a double corner of it?

A. No, it would not make a corner property of it; there is another property between me and the corner.

Q. You say you think there is a public necessity for it—have you ever seen a congestion of traffic on that street?

A. No, sir, I did not.

Q. The street is as wide there as it is at other points? A. I think so; I don't know.

Q. It is as wide as Franklin Street?

A. It probably is.

Q. The only trouble is on account that that short angle—if a team came down Front Street and tried to turn up Franklin they would have to turn that sharp corner?

A. It is a very bad corner.

Q. Do you think that any teamster with any sense about driving would have any difficulty there?

A. It would all depend upon the load he was hauling.

Q. If he was hauling a light load he would have no difficulty?

(Testimony of James McCloskey.)

A. If he was hauling a light load he might not but if he had a heavy load he would. If he had a long load he would because he could not get around.

Q. That is the only difficulty about the matter?

A. I think it would be a public necessity—I think it is an improvement to the town.

Q. In what way?

A. It helps the looks of the town.

Q. What other benefit would it be?

A. Benefit—it would help the teamsters.

Q. How many people haul things here in town?

A. There are probably ten teams that Mr. Casey has, and I suppose Mr. Lund and the Perseverance people have four or five teams.

Q. Only one, I think. Those are the only teams except the delivery wagons? A. No.

Q. This would benefit the teamsters and help the looks of the town?

A. It certainly would.

That is all.

[Testimony of J. W. Clarke.]

J. W. CLARKE, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your business? A. Mining.

Q. Have you ever had any experience as a teamster? A. A little.

Q. Do you know the premises at the intersection of the corner of Front Street and Franklin Streets?

(Testimony of J. W. Clarke.)

A. Yes, sir.

Q. Do you know how the Ashby property extends out into the street? A. Yes, sir.

Q. Tell the Court whether a team can turn that angle or not.

A. It would be very difficult with a long heavy load.

Q. Would it be possible for a four-horse team to get around there?

A. Not at present. If the property was built out upon a line with the street.

Q. If the property was condemned and the street straightened out there would be no difficulty?

A. No, I think not.

Q. You are familiar with the different grades of the streets?

A. That would be the easiest grade.

Q. The easiest grade would be around that corner? A. Yes, sir.

Q. In your judgment is there any public necessity for this change? A. Yes, sir.

Q. It would benefit everybody?

A. Yes, sir.

That is all.

Cross-examination.

(By Mr. COBB.)

Q. Have you ever seen teams have any trouble there? A. No, sir.

Q. How long have you lived here?

A. About nine years.

(Testimony of J. W. Clarke.)

Q. And you never saw them have any trouble there? A. No, sir.

That is all.

(By Mr. HELLENTHAL.)

Q. There might have been a lot of trouble there and you not see it? A. Yes, sir.

(By Mr. COBB.)

Q. Have you ever driven by there?

A. No, sir.

Q. Have you ever driven any teams here?

A. No, sir.

Q. Have you on any occasion seen any trouble there? A. No, sir.

That is all.

[Testimony of J. P. Jorgenson.]

J. P. JORGENSON, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You live here in Juneau? A. Yes, sir.

Q. Are you familiar with the Ashby property?

A. Yes, sir.

Q. Do you know whether a team can get around that corner?

A. I do not think they could turn with a load of lumber twenty-four feet long.

Q. There is a lot of twenty-four foot lumber used here? A. Yes, and up to fifty feet.

Q. You are in the sawmill business and handle all kinds of lumber? A. Yes, sir.

(Testimony of J. P. Jorgenson.)

Q. You handle a great many pieces of timber of those lengths?

A. I do. I don't think a wagon lengthened out can turn that corner.

Q. You mean any load where you have to lengthen out the wagon? A. Yes, sir.

Q. You may state if there is a public necessity for condemning this property?

A. That is my opinion.

That is all.

Cross-examination.

(By Mr. COBB.)

Q. Where is the lumber which is hauled in this town brought from?

A. It comes out from Mr. Young's place and mine.

Q. I don't understand that.

A. What did you ask me?

Q. Where is the lumber brought from?

A. From Mr. Young's place and mine.

Q. Where is your lumber-yard?

A. At the sawmill.

Q. You would not have to pass that corner from there? A. No.

Q. If they were hauling out from Young's and your store they could go up Seward Street?

A. They could if the lumber was going that way.

Q. Where would it be going if it could not go up Seward Street and get to the same place as if you went up Franklin?

(Testimony of J. P. Jorgenson.)

A. They can, but of course they could go around the block if they had to.

Q. Have you ever seen any trouble at that corner?

A. No, because the public use half an acre of the Corcoran lot.

Mr. HELLENTHAL.—That is, they go in on this property about five feet?

WITNESS.—Yes; seven or eight feet.

Q. That has been condemned and taken as a street?

A. I know the planking is in there.

Q. How do you know that that is Corcoran's property?

A. Mr. Garside shows the corner there and he says the Corcoran people own it.

Q. Don't you know that Corcoran gave that strip up to the city?

A. It would make it fifteen feet further out than it is now.

Q. They have done that, though?

A. No, sir.

Q. It is planked over?

A. You take two lines, one from the mill and one line past Mr. Valentine's place, and it would be out in the street.

That is all.

Mr. HELLENTHAL.—Plaintiff rests.

Sur-rebuttal Testimony.

[**Testimony of Emery Valentine.**]

EMERY VALENTINE, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. Your name is Emery Valentine?

A. Yes, sir.

Q. How long have you resided in Juneau?

A. Nearly twenty-one years.

Q. Where is your place of business?

A. Front Street.

Q. With reference to some other buildings?

A. On Front Street between the Corcoran corner and the center of the block.

Q. Opposite the block in which the Ashby property is located? A. Yes, sir.

Q. Do you know the comparative width of the street in front of the Ashby property?

A. The width of the street in front of my place?

Q. Yes. A. The same width—fifty feet.

Q. The street is the same width all the way up?

A. Not quite. Charley Young's store is built into the street about two and a half feet.

Q. How long have you been doing business in that block?

A. Something over eighteen years.

(Testimony of Emery Valentine.)

Q. Have you ever noticed any congestion of business around that corner? A. No, sir.

Q. Any trouble or difficulty with teams?

A. No, sir.

Q. See any teams in trouble because of the narrowness of the street? A. No, sir.

Q. Is there any public necessity for the condemnation of the Oscar Ashby property?

A. No, sir, not a bit—there is not.

Q. Do you know for what purpose this method of widening the street was started?

Mr. HELLENTHAL.—Objection to that. It is wholly immaterial.

COURT.—Overruled.

Q. Do you know?

A. I do not—all I know is what I think.

Q. They never told you why? A. No, sir.

Q. Do you know who started it—who got it up?

A. Mr. Jorgenson. I have heard him make more roar about it than any one else. I don't think there is any necessity for it.

That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You don't think there is any necessity for these proceedings?

A. I do not. I have been there at night and in the daytime and there is not a moment in the twenty-four hours that I cannot see that place, and I have seen four-horse teams turn around that corner right along with lumber thirty and forty feet long.

(Testimony of Emery Valentine.)

Q. You have seen it from your place of business?

A. I have seen it when the building was there.

Q. I am talking about the Louver.

A. Yes.

COURT.—Court will take a recess until 1:30 this afternoon.

Court convened pursuant to adjournment at 1:30 P. M., and all parties being present the following proceedings were had.

Mr. COBB.—I will call Mr. Johnson.

[Testimony of Richard Johnson.]

RICHARD JOHNSON, a witness called on behalf of the defendant, having been heretofore sworn, upon being recalled testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. I will ask you to look at this plat marked Defendant's Exhibit No. 1 and state to the Court whether or not there is a telephone pole in the street near that corner and if so where it is?

A. (Indicating.) There, about four feet from the edge of the sidewalk, on the edge of the street.

Q. From the northeast corner of the Ashbury building? A. Yes, sir.

Q. Have you ever seen teams have trouble in passing there on account of the telephone pole?

Mr. HELLENTHAL.—Objected to as immaterial.

COURT.—Overruled.

A. No.

Q. How long has that telephone pole been there?

(Testimony of Richard Johnson.)

A. About two years.

Q. Have you ever heard any complaints made about it being an obstruction there?

A. No, sir.

That is all.

Mr. COBB.—I think that is all.

Mr. HELLENTHAL.—That is all.

COURT.—Let the record show that the case is closed.

Testimony closed.

[Order Allowing, etc., Bill of Exceptions.]

And the above and foregoing is a full, complete and correct transcript of all the evidence introduced and proofs taken by the respective parties on the trial of said cause. And because the above and foregoing matters do not appear of record herein, I, James Wickersham, the Judge before whom said cause was tried and judgment rendered, and within the time allowed by order of Court made and entered during the term at which said cause was tried, do hereby certify that the above and foregoing transcript of the evidence and bill of exceptions is correct, and do hereby allow the same and order it filed and made a part of the record herein.

Dated this 28th day of December, 1907.

JAMES WICKERSHAM,

Judge of the District Court for Alaska.

[Endorsed]: 542-A. The City of Juneau, a Municipal Corporation, Plaintiff, vs. Oscar Ashby, Defendant. Bill of Exceptions. Filed Feb. 29, 1908. C. C. Page, Clerk. By R. E. Robertson, Asst.

*In the District Court for Alaska, Division No 1, at
Juneau.*

CITY OF JUNEAU, a Municipal Corporation,
Plaintiff,

vs.

OSCAR ASHBY,
Defendant.

Assignment of Errors.

Now comes the defendant, by his attorneys, and assigns the following errors committed by the Court on the trial of this cause and in the rendition of the decree therein, upon which he will rely on his appeal to the Appellate Court:

I.

The Court erred in overruling the defendant's demurrer to the plaintiff's complaint herein.

II.

The Court erred in holding a finding that on the 4th day of May, 1906, the common council of the City of Juneau duly and legally, by ordinance, opened and established a certain street in said City of Juneau known as Front Street, between Seward and Franklin Streets, in said city, which said ordinance was passed and adopted by the said council on the said 4th day of May, 1906, for the reason that the evidence conclusively showed that said Front Street had been opened and established to a substantially uniform width of fifty feet for its entire length, under the direction of the Secretary of the Interior, at the

time of the official survey of the plat of the townsite of Juneau, Alaska, and the said common council was without power or authority under the law to condemn property or by ordinance provide for the widening of said street at one particular point for the purpose of improving the view along certain portions of said street.

III.

The Court erred in the fourth finding of fact, which reads as follows, to wit:

“That said Front Street as established by the ordinance hereinbefore referred to and so opened up and laid out, is a public highway and street, and will be open to and used by the public as such highway and street, and that in order to open said street and establish the same to a width sufficient to accommodate the travel thereon by the public, it is necessary that the same be established to a width as designated in the ordinance hereinbefore referred to, and that obstructions projecting into or overlapping on said street as opened up, laid out and designated in the aforesaid ordinance be removed, and to that end it is necessary that a right of way be condemned over and upon the lands of defendant to the extent that they project into and overlap said Front Street as so laid out, and as above set forth by metes and bounds,”

—in this, that the evidence conclusively showed that said street was already opened throughout its entire length of some two blocks to a substantially uniform width of fifty feet; that the widest portion of said street as already established and used for twenty

years or more was opposite to and abutting upon the defendant's property and that there was absolutely no necessity whatsoever to increase the width of said street at said particular point for the purpose of accommodating the travel thereon by the public.

IV.

The Court erred in its first conclusion of law in holding that the land sought to be taken is such as may be condemned by the exercise of the right of public domain.

V.

The Court erred in the third conclusion of law in holding that there was any necessity shown for the use to which the plaintiff was seeking to put the property herein sought to be condemned.

VI.

The findings and decree are wholly unsustainable by the evidence in this, that the evidence showed that there was no necessity for the taking of the property in controversy for the purposes of widening Front Street, and that such purposes were not contemplated by the City Council at the time they sought to pass the ordinance under which the plaintiff is seeking to take said property, but the same was merely intended to improve adjacent private property; that should said property be taken as decreed in the decree herein, it will not improve said street to any extent whatsoever for the purpose of travel, in that it simply widens said street for a distance of some thirty feet, and at said point the street immediately narrows to its original width of fifty feet,

which in the nature of things could not add to its utility as a public highway.

And for said errors and others manifest of record, defendant prays that the decree herein be reversed and the cause remanded for such further proceedings as to the Court may seem proper.

MALONY & COBB,

Attys. for Oscar Ashby, Defendant and Appellant.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. City of Juneau, etc., Plaintiff, vs. Oscar Ashby, Defendant. Assignment of Errors. Filed Jun. 28, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

*In the District Court for Alaska, Division No 1, at
Juneau.*

CITY OF JUNEAU, a Municipal Corporation,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Petition for Allowance of Appeal.

The defendant herein, the above-named Oscar Ashby, conceiving himself aggrieved by the order and decree made and entered by the above-entitled court in the above-entitled cause under date of April 24, 1907, wherein and whereby, among other things, it was and is ordered and decreed that the property described in the complaint herein be condemned un-

der the power of eminent domain for the purposes of widening Front Street in the town of Juneau, Alaska, and appointing commissioners to assess the damages of the defendant upon such condemnation, does hereby appeal from said decree to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons set forth in the assignment of errors, which is filed herewith; and he prays that this, his petition for said appeal, may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that the Court will in said order allowing said appeal fix the amount of bond or security that the defendant shall furnish as a supersedeas upon such appeal, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said appeal by the said United States Circuit Court of Appeals for the Ninth Circuit

And your petitioners will ever pray, etc.,

MALONY & COBB,
Attorneys for Defendant.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. City of Juneau, etc., Plaintiff, vs. Oscar Ashby, Defendant. Petition for Allowance of Appeal. Filed Jun. 28, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

*In the District Court for Alaska, Division No 1, at
Juneau.*

CITY OF JUNEAU, a Municipal Corporation,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Order Allowing Appeal, etc.

Upon motion of J. H. Cobb, Esq., counsel for the defendant, and on filing the petition of Oscar Ashby for an order allowing appeal, together with an assignment of errors, it is ordered that an appeal be, and is hereby allowed in this cause to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree entered on the 24th day of April, 1907, condemning the property described in the complaint herein, under the power of eminent domain, for the purpose of widening Front Street in the town of Juneau, Alaska; that the amount of the bond upon said appeal be and hereby is fixed at the sum of \$500.00, and that a certified transcript of the records and proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and that upon the giving of the bond aforesaid, duly approved by this Court, that all proceedings herein be stayed pending the determination of said appeal.

Dated this 28th day of June, 1907.

JAMES WICKERSHAM,

Judge.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. City of Juneau, etc., Plaintiff, vs. Oscar Ashby, Defendant. Order Allowing Appeal. Filed Jun. 28, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

In the District Court for Alaska, Division No. 1, at Juneau.

CITY OF JUNEAU, a Municipal Corporation,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Bond on Appeal.

Know all men by these presents, that we, Oscar Ashby, as principal, and Richard Johnson and J. J. McGrath, as sureties, are held and firmly bound unto the City of Juneau, a municipal corporation, in the full and just sum of \$500.00, to be paid to the said City of Juneau, its attorneys, successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 27th day of June, 1907.

Whereas, lately at a session of the District Court for Alaska, Division No. 1, in a suit pending in said court between the said City of Juneau, complainant, and Oscar Ashby, defendant, a decree was rendered

against the said Oscar Ashby, and the said Oscar Ashby having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree in the aforesaid suit, and a citation directed to the said City of Juneau is about to be issued citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California,—

Now, the condition of the above obligation is such that if the said Oscar Ashby shall prosecute his said appeal to effect, and shall answer all damages and costs that may be awarded against him, if he fail to make his plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

OSCAR ASHBY,
By MALONY & COBB,
His Attys. of Record.
RICHARD JOHNSON.
J. J. McGRATH.

Taken and acknowledged before me, this the 27th day of June, 1907.

[Notarial Seal]

L. CHAPIN,
Notary Public in and for Alaska.

Sufficiency of sureties and form of the above and foregoing bond approved this 28th day of June, 1907, the same to operate as a supersedeas from and after the filing thereof.

JAMES WICKERSHAM,
Judge.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. City of Juneau, etc., Plaintiff, vs. Oscar Ashby, Defendant. Bond on Appeal. Filed Jun. 28, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 542-A.

CITY OF JUNEAU, a Municipal Corporation,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Citation [on Appeal—Original].

United States of America,—ss.

The President of the United States to the City of Juneau, District of Alaska, and J. A. Hellenthal, its Attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court for Alaska, Division No. 1, wherein Oscar Ashby is appellant and you are appellee, to show cause, if any there be, why the decree in the said

appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this 28th day of June, A. D. 1907, and of the Independence of the United States the one hundred and thirty-first.

JAMES WICKERSHAM,

District Judge for Alaska, Holding Sessions for Division No. 1, at Juneau.

Service of the above and foregoing citation is hereby admitted to have been duly and legally made this the 28 day of June, 1907.

J. A. HELLENTHAL,

Attorney for the City of Juneau, the Above-named Appellee.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. City of Juneau, etc., Plaintiff, vs. Oscar Ashby, Defendant. Citation. Filed Jun. 28, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 542-A.

CITY OF JUNEAU, a Municipal Corporation,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

**Order [Extending Time to Prepare, etc., Record Un-
til September 1, 1907].**

The Honorable James Wickersham, the Judge before whom the above-entitled and numbered cause was tried, being about to leave for Division No. 3, of the District of Alaska, for the purpose of holding court, and not expecting to return prior to the — day of August next;

Now, on motion of Messrs. Malony & Cobb, attorneys for the defendant and appellant, it is ordered that the appellant be, and is hereby, granted until the 1st day of September, 1907, in which to have prepared and certified a transcript of the evidence and record for appeal in said cause.

Done in open court this the 28th day of June, 1907.

JAMES WICKERSHAM,

Judge.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. City of Juneau, etc., Plaintiff, vs. Oscar Ashby, De-

pendant. Order. Filed Jun. 28, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 542-A.

CITY OF JUNEAU, a Municipal Corporation,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

**Order [Extending Time to File Record Until Oc-
tober 1, 1907].**

An appeal having been allowed in the above-entitled cause, and it appearing to the Court that it is impracticable for the Clerk of the Court to make up, certify and transmit to the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record in said cause within thirty days from the date of the allowance of said appeal,—

It is therefore, upon motion of Messrs. Malony & Cobb, ordered that the time for the filing of the said transcript of record in the said Circuit Court of Appeals be, and the same is hereby, extended until October 1, 1907.

JAMES WICKERSHAM,

Judge.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau.

City of Juneau, etc., Plaintiff, vs. Oscar Ashby, Defendant. Order. Filed Jun. 28, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

In the District Court for Alaska, Division No. 1, at Juneau.

No. 542-A.

CITY OF JUNEAU, a Municipal Corporation,
Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

Order [Extending Time to File Record Until March 15, 1908].

Upon motion of Messrs. Malony & Cobb, attorneys for defendant in the above-entitled and numbered cause, and for the reasons in said motion stated, it is ordered that the defendant be, and he is hereby granted an extension of time in which to have prepared, certified and filed a transcript of the evidence, and bill of exceptions in said cause to and including the 1st day of February, 1908; it is further ordered that the defendant be, and he is hereby granted to and including the 15th day of March, 1908, in which to file the transcript of the record herein in the Appellate Court.

Dated this 7th day of September, 1907.

JAMES WICKERSHAM,

Judge of the District Court for Alaska, Division No. 3, Holding Sessions at Division No. 1, at Juneau.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. City of Juneau, a Municipal Corporation, Plaintiff, vs. Oscar Ashby, Defendant. Order. Filed Sep. 7, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

*In the District Court for Alaska, Division No. 1, at
Juneau.*

CITY OF JUNEAU,

Plaintiff,

vs.

OSCAR ASHBY,

Defendant.

**Order [Extending Time to File Record Until April
15, 1908].**

Upon petition of the defendant, and for good cause shown, the time for filing the transcript on appeal in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit is hereby further extended to and including the 15th day of April, 1908.

Dated February 29th, 1908.

ROYAL A. GUNNISON,

Judge.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. City of Juneau, etc., Plaintiff, vs. Oscar Ashby, Defendant. Order. Filed Feb. 29, 1908. C. C. Page, Clerk. By R. E. Robertson, Asst. Malony & Cobb, Attorneys for Defendant. Office: Juneau, Alaska.

*In the District Court for Alaska, Division No. 1, at
Juneau.*

OSCAR ASHBY,

Appellant,

vs.

CITY OF JUNEAU, a Municipal Corporation,

Appellee.

Praeceptum for Transcript [of Record].

To the Clerk of the District Court for Alaska, Division No. 1:

You will please prepare a transcript of the record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the appeal heretofore perfected in said court and including in said record the following records, papers and proceedings, to wit:

1. Complaint.
2. Demurrer.
3. Order overruling demurrer.
4. Answer.
5. Reply.
6. Findings and conclusions.
7. Judgment.
8. Bill of exceptions.
9. Assignment of errors.
10. Petition for appeal.
11. Order allowing appeal.
12. Bond on appeal.
13. Citation.

14. Orders of June 28, 1907.
15. Orders of June 28, 1907.
16. Order extending time to file bill of exceptions, September 7, 1907.
17. Order extending time to file transcript, February 29, 1908.
18. Praeceptum for transcript.
19. Certificate.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

MALONY & COBB,
Attorneys for Appellant.

[Endorsed]: Original. No. 542-A. In the District Court for Alaska, Division No. 1, at Juneau. Oscar Ashby, Plaintiff, vs. City of Juneau, Defendant. Praeceptum for Transcript. Filed Mar. 30, 1908. C. C. Page, Clerk. By R. E. Robertson, Asst. Malony & Cobb, Attorneys for Appellant. Office: Juneau, Alaska.

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 542-A.

THE CITY OF JUNEAU, a Municipal Corporation Organized and Existing under and by Virtue of the Laws of the District of Alaska,
Plaintiff and Appellee,
vs.
OSCAR ASHBY,
Defendant and Appellant.

Clerk's Certificate [to Transcript of Record].

I, C. C. Page, Clerk of the District Court for the District of Alaska, Division No. 1, do hereby certify that the foregoing and hereto annexed one hundred pages of typewritten matter numbered from 1 to 100, both inclusive, constitute a full, true and correct copy of the record and the whole thereof, as requested by appellant's praecipe on file herein and made a part hereof, in cause No. 542-A, wherein The City of Juneau, a municipal corporation organized and existing under and by virtue of the laws of the District of Alaska, is plaintiff and appellee, and Oscar Ashby is defendant and appellant, as the same appear of record and on file in my office; and that the said record is, by virtue of the order of appeal and citation issued in this cause, and the return thereof, in accordance therewith.

And I do further certify that this transcript was prepared by me in my office and that the cost of preparation, examination and certificate, amounting to forty-three dollars and eighty-five cents (\$43.85), has been paid to me by the appellant.

In witness whereof I have hereunto set my hand and affixed the seal of this court at Juneau, Alaska, this 31st day of March, 1908.

[Seal]

C. C. PAGE,
Clerk of the District Court.

[Endorsed]: No. 1589. United States Circuit Court of Appeals for the Ninth Circuit. Oscar Ashby, Appellant, vs. The City of Juneau, a Municipal Corporation, Organized and Existing under and by Virtue of the Laws of the District of Alaska, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed April 8, 1908.

F. D. MONCKTON,
Clerk.

